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Supreme Court, U.S.
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No. 00-733

IN THE

Supreme Court of the United States

RICHARD NICHOLAS, et al.,

Petitioners,

—v.—

SAUL STONE & COMPANY, LLC, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RULE 29.6 STATEMENT

Merrill Lynch & Co., Inc., a publicly held company, is the parent corporation of Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated. Said respondent is a wholly owned subsidiary of Merrill Lynch & Co., Inc.

Respondent Prudential Securities Incorporated is a subsidiary of Prudential Securities Group and an indirect subsidiary of The Prudential Insurance Company of America. The Prudential Insurance Company of America is respondent's ultimate parent corporation. No publicly held company owns 10% or more of said respondent's stock.

Morgan Stanley Dean Witter & Co., a publicly held company, is the parent corporation of Respondent Dean Witter Reynolds, Inc. Said respondent is a wholly owned subsidiary of Morgan Stanley Dean Witter & Co.

Citigroup, Inc., a publicly held company, is the parent corporation of Respondent Salomon Smith Barney, Inc. Said respondent is a wholly owned subsidiary of Citigroup, Inc.

E.D. & F. Man Group, P.L.C., a publicly held company, is the parent corporation of Respondent E.D. & F. Man International Inc. Said respondent is a wholly owned subsidiary of E.D. & F. Man Group, P.L.C.

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PRELIMINARY STATEMENT

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Prudential Securities Incorporated ("Prudential"), Smith Barney, Inc. ("Smith Barney"), Dean Witter Reynolds, Inc. ("Dean Witter") and E.D. & F. Man International Inc. ("Man") (collectively "Respondents") respectfully submit this brief in opposition to the Petition for Writ of Certiorari.

Petitioners ask the Supreme Court to create a private right of action under the Commodity Exchange Act ("CEA") for alleged violation of Section 1101 of the Bylaws of the National Futures Association ("NFA"), an issue not properly raised in petitioners' complaint nor fully developed in the opinions of the courts below. The private right of action would run against futures commission merchants ("FCMs") who are NFA members. Since respondents are FCMs, this brief addresses whether Congress provided in the CEA for private rights of action against FCMs for alleged violations of NFA Bylaws.

STATEMENT OF THE CASE

Petitioners now ask the Supreme Court to grant certiorari in order to create an implied private right of action against FCMs for alleged violation of NFA Bylaw 1101. There are two basic reasons to reject petitioners' writ of certiorari: (1) petitioners did not raise this issue below; and (2) the private right of action urged by petitioners has no basis in the precedents of this or other Courts and there is no compelling reason, in policy, statute or otherwise, to create one. Petitioners failed to directly raise the issue they now seek to have this Court review in their 223 paragraph, eleven count Complaint, whether as a separately alleged cause of action or

otherwise. Rather, as described by the district court, the Second Count of petitioners' First Amended Complaint (the "Complaint") asserted that Bylaw 1101 was part of a contract between the NFA and its members of which petitioners were third party beneficiaries and which the FCMs had breached. *See* P.A. 63a.[1] In rejecting that claim, the district court dealt with the issue raised by the Complaint and therefore discussed applicable contract law, noting only in passing that "third party enforcement of the rules of a self-regulatory organization has been considered and rejected by a number of other Courts," citing cases refusing to imply a private right of action under NFA Bylaw 1101 and similar rules. P.A. 67a. In affirming, the Third Circuit did not discuss at all this state law breach of contract claim, relying instead on the district court's opinion on this point. P.A. 29a-30a.

This Court should not depart from its usual course and grant certiorari to rule on an issue not directly raised in the pleadings, nor fully developed in the opinions of the courts below.

Even if the Court determines that petitioners properly raised the issue below, none of the considerations set forth in Supreme Court Rule 10 governing review on certiorari is present in this case. There are no "com-

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[1] The First and Third Counts of the Complaint also mention Bylaw 1101 in connection with the causes of action asserted therein, but these claims either have been abandoned or are not made against the FCMs. The First Count alleged that respondents either violated or aided and abetted violations of the CEA. The district court dismissed the First Count (P.A. 56a-63a); the Third Circuit affirmed (P.A. 18a-29a) and petitioners do not seek this Court's review of the dismissal of the First Count. The Third Count alleged a bad faith failure to enforce NFA rules (including Bylaw 1101), but it was directed solely against the NFA and certain individuals, not against the FCMs. *Id.* A copy of the Complaint is annexed hereto as an Appendix, referred to below as "R.A." The Appendix attached to the Petition is referred to as "P.A."

pelling reasons" warranting review, as evidenced by the fact that petitioners did not even squarely raise the issue below. There is no conflict between the Third Circuit's decision and that of another federal court of appeals or state court of last resort on the same matter, notwithstanding petitioners' assertion of a conflict with an unrelated Second Circuit case. There is no important question of federal law which has not been, but should be, settled by the Supreme Court. To the contrary, the decisions below are wholly consistent with this Court's cases delineating when private rights of action may be implied and cases in other courts specifically rejecting implication of a private right of action under NFA Bylaw 1101 or other similar rules of self-regulatory organizations.

SUMMARY OF ARGUMENT

This Court's precedents are clear: when a party asserts that there is a private right of action under a federal statute the issue is determined by whether Congress, in enacting the statute at issue, intended to create a private remedy. Courts therefore will not imply a private remedy absent persuasive evidence of such Congressional intent.

The CEA expressly sets forth those private rights of action that are available thereunder. These include a carefully described and limited private right of action against a person (including an FCM) who violates or willfully aids and abets the violation of the CEA where such person stands in one of four specified relationships with the plaintiff. The statute does not provide a private remedy for violating Bylaw 1101. Since Congress did provide private rights of action against FCMs, but chose not to include such an action for violating Bylaw 1101, it is clear that Congress did not intend to create this additional private right of action.

Moreover, Congress conclusively expressed its intent not to expand private remedies beyond those it expressly set forth in the CEA by providing not once but twice that the private rights of action it specified therein are the *exclusive* private remedies available to persons damaged by alleged violations of the CEA. Accordingly, the CEA leaves no room to imply additional private rights of action.

ARGUMENT

NO PRIVATE RIGHT OF ACTION EXISTS FOR VIOLATION OF SECTION 1101 OF THE NFA BY-LAWS

A. Private Rights of Action May Not Be Implied Without Persuasive Evidence of Congressional Intent to Create Them.

This Court's central teaching on the issues involved here is that "the question whether a statute creates a cause of action, either expressly or by implication, is basically a matter of statutory construction." *Transamerica Mortgage Advisors, Inc. (TAMA) v. Lewis*, 444 U.S. 11, 15 (1979). As the Court stated in *Touche Ross & Co. v. Redington*, 442 U.S. 560, 575 (1979):

> [I]n *Cort v. Ash*, [422 U.S. 66 (1975),] the Court set forth four factors that it considered 'relevant' in determining whether a private remedy is implicit in a statute not expressly providing one. But the Court did not decide that each of these factors is entitled to equal weight. The central inquiry remains whether Congress intended to create, either expressly or by implication, a private cause of action.

As the Court noted in *Spicer v. Chicago Board of Options Exchange, Inc.*, 977 F.2d 255 (7th Cir. 1992), after

reviewing this Court's precedents, "in sum, courts may not recognize an implied remedy absent persuasive evidence that Congress intended to create one." *Id.* at 265.[2]

Indeed, this Court's decision in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994), together with other Supreme Court decisions, have underscored the strong presumption against implying private causes of action. *Id.* at 179-80. *Cf.*, *TAMA*, 444 U.S. at 22-23 n. 13 ("Congress amended the Investment Company Act in 1970 to create a *narrowly circumscribed right of action* for damages" and these amendments are a "clear indication that Congress knew how to confer a private right of action when it wished to do so") (emphasis added); *Touche Ross*, 442 U.S. at 578 (noting Court's adherence "to a stricter standard for the implication of private causes of action."). As Justice Powell declared in *Cannon v. University of Chicago*, "[a]bsent the *most compelling evidence of affirmative congressional intent*, a federal court should not infer a private cause of action." 441 U.S. 677, 731 (1979) (dissenting opinion) (emphasis added).

Analysis of Congess's intent begins with the language of the statute itself. *Central Bank*, 511 U.S. at 173; *Touche Ross*, *supra*, 442 U.S. at 568. Some important corollar-

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[2] Petitioners' request that the Court "revisit" the *Cort v. Ash* test (P.A. 19-20) is unavailing. As the Court noted in *Touche Ross*, 442 U.S. at 576, the first three *Cort* factors—language and focus of the statute, its legislative history and its purpose—are the traditional factors used in determining legislative intent. Application of these factors confirms that the explicit intent of the CEA was to exclude private remedies not explicitly set forth therein, as discussed below. The fourth *Cort* factor—whether the cause of action is one traditionally relegated to state law—also weighs against petitioners; for as previously noted petitioners' Bylaw 1101 claim appears in the Second Count of the Complaint alleging breach of contract. As both the district court and the Third Circuit pointed out, this is a state law claim. P.A. 63a, 29a.

ies relevant to this case flow from the focus on congressional intent as expressed in the language of the statute. First, where the statute in question explicitly grants private rights of action, an intent to imply additional ones is negated, for "when Congress wished to provide a private damage remedy, it knew how to do so and did so expressly." *Id.* at 572. *See also TAMA*, *supra*, 444 U.S. at 19 ("it is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it"). In the present case, as discussed below, Congress explicitly granted private rights of action in the CEA, including as against FCMs, and emphasized that they were the exclusive private remedies, thus conclusively negating any intent to allow additional ones.

Second, a statute cannot be read more broadly than its language and statutory scheme permits to effectuate some asserted remedial purpose of the statute or because of claims that the statute was intended to benefit the plaintiff's class. *Touche Ross*, *supra*, 442 U.S. at 578; *TAMA*, *supra*, 444 U.S. at 17-18. Here, petitioners' "Argument I" (the only argument in the Petition directed against the FCMs) asks the Court to imply a private right of action against the FCMs because, they allege, failure to do so "frustrates the Congressional goal to protect the investing public" or that Bylaw 1101 is designed "to stop the commencement of fraud." *E.g.*, Petition at 11, 15.[3] However, petitioners' argument is just that—argument, divorced from foundation in the language of the CEA; indeed, petitioners do not cite any provision of the CEA even purporting to provide a private right of action against FCMs for violating NFA Bylaws. *See* Petition at 11-22. Petitioners' claims about the underlying purposes

[3] Petitioners' "Argument II" (Petition at 22-25) purports to be based on statutory language, but that argument is directed solely against respondent NFA and therefore we do not comment on it here.

of the CEA (which are incompletely and inaccurately stated) thus are irrelevant because, borrowing from this Court's language in *Touche Ross*, the CEA "does not by any stretch of its language purport to confer private damages rights" against FCMs for violation of NFA Bylaws. 442 U.S. at 570.

B. The CEA's Language Excludes Any Private Right of Action Against the FCMs for Alleged Violation of NFA Bylaw 1101.

As the Third Circuit noted below, the NFA is a Registered Futures Association which functions as the futures industry's self-regulatory organization under 7 U.S.C. § 21. P.A. 8a n.6. NFA By-law 1101 provides that "no Member may carry an account, accept an order or handle a transaction in commodities futures contracts for or on behalf of any nonMember of the NFA . . . that is required to be registered" with the Commodity Futures Trading Commission ("CFTC"). P.A. 145a.

Petitioners' claim is that the FCMs carried accounts of the perpetrators of a Ponzi scheme who were required to be registered with the CFTC but were not; and the FCMs violated Bylaw 1101 by failing to detect this non-registration. Whatever the merits of this claim, the plain fact is that the CEA does not provide—and indeed excludes —any private right of action against the FCMs on such a claim.

Thus, the CEA expressly sets forth the private rights of action available thereunder. 7 U.S.C. § 25(a)(1) provides for a private right of action for damages caused by "any person . . . who violates this chapter or who willfully aids or abets . . . the commission of a violation of this chapter," where such person stands in one of four specified relationships with the aggrieved person. The Third Circuit held that the Complaint failed to state a

cause of action against the FCMs under 7 U.S.C. § 25(a)(1) because the FCMs did not have (directly or via some agency theory) one of the relationships with petitioners required for primary liability, nor did petitioners' Complaint allege conduct which might render the FCMs liable as aiders or abettors. P.A. 18a-29a. *Petitioners do not seek review of this determination.*

Congress also explicitly provided in the CEA for private rights of action relating to non-enforcement of bylaws. 7 U.S.C. § 25(b). On its face, however, this provision does not apply to the FCMs. Indeed, petitioners do not argue that 7 U.S.C. § 25(b) has any application to the FCMs. Moreover, 7 U.S.C. § 25(a)(1) does not allow for a private right of action based on violations of bylaws.

Accordingly, there is nothing in the express language of the CEA which provides for a private right of action against the FCMs for violation of NFA Bylaw 1101.

C. The CEA Precludes Implication of Additional Private Rights of Action.

Apart from expressly providing for private rights of action against specified parties, the CEA states not once but twice that the private rights of action specified therein are the *exclusive* remedies available under the CEA to individuals. 7 U.S.C. §§ 25(a)(2) and (b)(5). As discussed above, the express provision in the CEA for private rights of action coupled with the express provision that those private rights are exclusive precludes implication of additional private rights under the CEA. *See Touche Ross*, *supra*, 442 U.S. at 572; *TAMA*, *supra*, 444 U.S. at 19.

These exclusive remedies came about as a result of Congress's reaction to this Court's holding in *Merrill Lynch, Pierce, Fenner & Smith v. Curran*, 456 U.S. 353

(1982). The *Curran* Court found that the CEA provided for implied private rights of action. Thereafter, Congress superseded *Curran*—amending the CEA by adding 7 U.S.C. § 25 to provide these exclusive remedies. See Futures Trading Act of 1982, Pub. L. 97-444, § 235, 96 Stat. 2294, 2322-24 (Jan. 11, 1983).

Courts have recognized this settled state of the law by repeatedly holding that no private rights of action exist for violations of the rules of the NFA or other self-regulatory organizations. The Court specifically so held with respect to NFA Bylaw 1101 in *In re Lake States Commodities, Inc.*, 936 F. Supp. 1461, 1468-69 (N.D. Ill. 1996). Additional cases declining to imply private rights of action under the CEA are *Indemnified Capital Investments SA v. R.J. O'Brien & Associates, Inc.*, 12 F.3d 1406, 1412 (7th Cir. 1993); *Procter & Gamble Co. v. Bankers Trust & Co.*, 925 F. Supp. 1270, 1287-88 (S.D.Ohio 1996); *Fustok v. ContiCommodity Services, Inc.*, 618 F. Supp. 1069, 1071-74 (S.D.N.Y. 1985); and the cases cited by the district court below at P.A. 70a.

D. There is No Conflict Between the Circuits on this Issue.

There is no conflict between the circuits on whether a private right of action can be implied against FCMs for alleged violation of NFA Bylaw 1101 or, more generally, for violation of any NFA bylaw or rule.

In an effort to imagine a conflict between the circuits warranting Supreme Court review, petitioners assert that the Third Circuit's decision in this case "ignores" the Second Circuit's decision in *Peltz v. SHB Commodities, Inc.*, 115 F.3d 1082 (2d Cir. 1997). See P.A. 13. *Peltz* has nothing to do with this case. It involved a claim that certain trades in plaintiff's account were unauthorized, in violation of the CEA's express prohibition against an

FCM trading for a customer's account without his permission. See 7 U.S.C. § 6(b); 115 F.3d at 1086-87. The issue there was whether, when an FCM executes trades for a customer's account at the direction of a third party, the FCM is under a duty to inquire whether the third party had actual or apparent authority to direct those trades. The Court held that there was no duty of inquiry when the third party had actual authority since such inquiry would be superfluous; but that the FCM must make a reasonable inquiry when asserting a defense of apparent authority. *Id.* at 1089. The decision does not involve or discuss implication of private rights of action, either under NFA Bylaw 1101 or otherwise; an unauthorized trade would violate an express provision of the CEA for which a private right of action for damages is expressly authorized by 7 U.S.C. § 25(a)(1).

Petitioners also seek to distinguish *Lake States Commodities*, *supra*, which squarely held that there was no private right of action under NFA Bylaw 1101, because, as the Court there noted, the plaintiffs had failed to offer "persuasive justification" for departing from the proposition that general rules of exchange organizations do not create private rights of action. See P.A. 14-15. This purported distinction is non-existent: *Lake States* involved facts virtually identical to those in the present case—a Ponzi scheme which an FCM failed to prevent because it breached its alleged duty under Bylaw 1101 to determine that the crooks were not registered. *See* 936 F. Supp. at 1465, 1468-69. *Lake States* thus reasonably cannot be distinguished from this case, either on its facts or the law.

CONCLUSION

The holding below is wholly consistent with this Court's precedents limiting the implication of private rights of action under federal statutes and with the extensive body of cases in the courts of appeals and district courts declining to imply additional rights of action under the CEA in general and NFA Bylaw 1101 in particular. There are no "special and important reasons" compelling review by the Supreme Court. The Petition should be denied.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 97-860(AET)

RICHARD NICHOLAS; LYNN NICHOLAS; ROBERT M. BLACKBURN; CHERYL S. BLACKBURN; and, On Behalf of Themselves and On Behalf of the Class of All Others Similarly Situated,

Plaintiffs,

—VS.—

SAUL STONE & COMPANY LLC F/K/A SAUL STONE AND COMPANY; FIRST OPTIONS OF CHICAGO, INC. D/B/A LIT DIVISION OF FIRST OPTIONS; SMITH BARNEY, INC.; LFG, LLC F/K/A LINNCO FUTURES GROUP, INC.; GNI INCORPORATED; GNI LIMITED; DEAN WITTER REYNOLDS, INC.; ING (U.S.) SECURITIES FUTURES & OPTIONS, INC. D/B/A ING FUTURES & OPTIONS; MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.; PRUDENTIAL SECURITIES, INC.; ROSENTHAL COLLINS GROUP, L.P. F/K/A ROSENTHAL & COMPANY; E. D. & F.

MAN INTERNATIONAL, INC. F/K/A E. D. & F. MAN INTERNATIONAL SECURITIES, INC.; CLARENCE DELBRIDGE, III; THOMAS H. STONE; NATIONAL FUTURES ASSOCIATION; JOHN DOE; JOAN DOE, JACK DOE; JOSEPH DOE; JANE DOE; JAKE DOE; JEFF DOE; JEAN DOE; JAMES DOE; JILL DOE; and JOEL DOE,

Defendants.

FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs named herein bring this action in their individual capacity and on behalf of the class of persons defined below, and all allegations contained in the First Amended Complaint ("Complaint") on the personal knowledge and facts of the named Plaintiffs and otherwise upon information and belief based, *inter alia*, upon the Plaintiffs' direct investigation of known and available facts through themselves and their attorney herein.

JURISDICTION AND VENUE

1. This action arises under the Commodity Exchange Act ("CEA"), as amended, 7 U.S.C. §§ 1 *et seq.*; Title IX of the Organized Crime Control Act of 1970 ("RICO"), 18 U.S.C. §§ 1961-1968; The New Jersey Uniform Securities Law, N.J.S.A. 49:3-47, *et seq.*; The New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*; and, applicable principles of common law.

2. Jurisdiction of this action is founded upon 7 U.S.C. § 25(c); 18 U.S.C. § 1964(c); 28 U.S.C. § 1331 ("Federal Question") and by virtue of this Court's pendant and ancillary jurisdiction over claims arising under state law

pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the claims over which the Court has original jurisdiction that they form part of the same case or controversy. Service of Process outside the territorial limits of the District of New Jersey is made pursuant to 15 U.S.C. § 77v; 18 U.S.C. § 1965.

3. Venue is based upon 28 U.S.C. §§ 1391(b) and (c), and 18 U.S.C. § 1965(a) of RICO; in that the corporate and individual Defendants do business in this District, and the acts and transactions constituting the violations of law described in this Complaint, occurred in substantial part within the District of New Jersey.

4. In connection with the acts and conduct alleged within this Complaint the Defendants directly and indirectly used means and instrumentalities of interstate commerce, including the United States Mail, interstate and intrastate telephone communications, the facilities of various wire service systems for reporting commodities futures transactions, and interstate banking facilities.

PLAINTIFF CLASS REPRESENTATIVES

5. At all times pertinent hereto, the named Plaintiffs and proposed class representatives, Richard Nicholas and Lynn Nicholas ("Nicholas") who reside at 62 South Main Street, Cranbury, New Jersey 08512, and Robert M. Blackburn and Cheryl S. Blackburn ("Blackburn") who reside at 12 Hadley Drive, Cranbury, New Jersey 08512, were individual investors who delivered money to Charles "Chuck" Kohli ("Kohli"), Ram Chandran a/k/a Nungambukkam Swamy Ramachandran ("Chandran") and the Sigma Entities, as hereinafter defined, to be invested in commodity futures contracts through Defendants, Saul Stone & Company, LLC F/K/A Saul Stone And Company ("Saul Stone"), First Options of

Chicago, Inc. D/B/A LIT Division of First Options ("First Options"), Smith Barney, Inc. ("Smith Barney"), LFG, LLC F/K/A Linnco Futures Group, Inc. ("Linnco"), GNI Incorporated and GNI Limited (collectively "GNI"), Dean Witter Reynolds, Inc. ("Dean Witter"), ING (U.S.) Securities Futures & Options, Inc. D/B/A ING Futures & Options and F/K/A Quantum Financial Services, Inc., Internationale Nederlanden U.S. Derivatives Clearing, Inc., ING Securities Futures & Options, Inc. ("ING"), Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"), Prudential Securities, Inc. ("Prudential"), Rosenthal Collins Group, L.P. F/K/A Rosenthal & Company ("Rosenthal"), E. D. & F. Man International, Inc. F/K/A E.D. & F. Man International Securities, Inc. ("E D & F"), and their respective agents, John Doe, Joan Doe, Jack Doe, Joseph Doe, Jane Doe, Jake Doe, Jeff Doe, Jean Doe, James Doe, Jill Doe, and Joel Doe. The dates and amounts of those investments, and all sums returned, for each named Plaintiff and proposed Class representative are as follows:

a. Nicholas initially deposited funds with Kohli, Chandran and the Sigma Entities, as hereinafter defined, from their IRA accounts, 401(K) pension funds and personal savings as follows:

Amount Invested	January 12, 1993	4,000.00
	May 1, 1993	8,000.00
	May 18, 1993	25,000.00
	January 4, 1994	10,000.00
	January 4, 1994	30,000.00
	August, 1994	125,000.00
Amount Returned		$ (39,000.00)
Net Loss		$ (163,000.00)

Nicholas lost all but $ 39,000.00 of their investment as well as improperly charged fees, $213,000.00 in purported profits and unexpected adverse tax consequences. Nicholas was required to file bankruptcy in the United States Bankruptcy Court for the District of New Jersey due to the aforesaid loss.

b. Blackburn initially deposited funds with Kohli, Chandran and the Sigma Entities, as hereinafter defined, from their IRA accounts, 401(K) pension funds and personal savings as follows:

Amount Invested	February 24, 1994	$106,306.39
	March 10, 1994	3,946.41
Amount Returned	April 12, 1995	$ (0.00)
Net Loss		$ (110,252.80)

Blackburn lost all of their investment as well as improperly charged fees, $133,468.65 in purported profits and unexpected adverse tax consequences.

DEFENDANTS

6. Upon information and belief, at all times pertinent to this Complaint, Saul Stone, was an Illinois corporation and is now an Illinois limited liability company, with its principal place of business at c/o Clarence Delbridge, III, 30 South Wacker Drive, Suite 1300, Chicago, Illinois 60606-7493; Saul Stone is registered with the Commodity Futures Trading Commission ("CFTC") under Section 4f of the CEA (7 U.S.C. § 6f) as a Futures Commission Merchant ("FCM"); Saul Stone is engaged in, among other things, the business of brokerage in connection with the sale of commodities and commodity futures contracts, as well as options thereon; Saul Stone is a clearing member of commodity

exchanges, in particular the Chicago Mercantile Exchange ("CME"), its Designated Self Regulatory Organization ("DSRO"); Saul Stone is a member of the National Futures Association ("NFA") and at all times relevant hereto, Saul Stone transacted business in the State of New Jersey as a FCM for Plaintiffs.

7. Upon information and belief, and at all times pertinent to this Complaint, Defendant, John Doe was at all times alleged herein an employee and/or an agent of Defendant Saul Stone, acting at various times and simultaneously under the titles of "account executive," "registered representative," "associated person," "commission broker," and "introducing broker" for Saul Stone, and was at all times alleged herein acting within the actual or apparent scope of his employment and/or agency at common law and within the meaning of 7 U.S.C. § 4 and 17 C.F.R. § 1.2.

8. Upon information and belief, at all times pertinent to this Complaint, First Options, was a Delaware corporation, with its principal place of business at One Financial Place, 440 South LaSalle Street, Chicago, Illinois 60606-1028; First Options is registered with the CFTC under Section 4f of the CEA (7 U.S.C. § 6f) as a FCM; First Options is engaged in, among other things, the business of brokerage in connection with the sale of commodities and commodity futures contracts, as well as options thereon; First Options is a clearing member of commodity exchanges, in particular the CME, its DSRO; First Options is a member of the NFA and at all times relevant hereto, First Options transacted business in the State of New Jersey as a FCM for Plaintiffs.

9. Upon information and belief, and at all times pertinent to this Complaint, Defendant, Joan Doe was at all times alleged herein an employee and/or an agent of

Defendant First Options, acting at various times and simultaneously under the titles of "account executive," "registered representative," "associated person," "commission broker," and "introducing broker" for First Options, and was at all times alleged herein acting within the actual or apparent scope of her employment and/or agency at common law and within the meaning of 7 U.S.C. § 4 and 17 C.F.R. § 1.2.

10. Upon information and belief, at all times pertinent to this Complaint, Smith Barney, was a Delaware corporation, with its principal place of business at 388 Greenwich Street, 8th Floor, New York, New York 10013; Smith Barney is registered with the CFTC under Section 4f of the CEA (7 U.S.C. § 6f) as a FCM; Smith Barney is engaged in, among other things, the business of brokerage in connection with the sale of commodities and commodity futures contracts, as well as options thereon; Smith Barney is a clearing member of commodity exchanges, in particular the Chicago Board of Trade ("CBOT"), its DSRO; Smith Barney is a member of the NFA and at all times relevant hereto, Smith Barney transacted business in the State of New Jersey as a FCM for Plaintiffs.

11. Upon information and belief, and at all times pertinent to this Complaint, Defendant, Joseph Doe was at all times alleged herein an employee and/or an agent of Defendant Smith Barney, acting at various times and simultaneously under the titles of "account executive," "registered representative," "associated person," "commission broker," and "introducing broker" for Smith Barney and was at all times alleged herein acting within the actual or apparent scope of his employment and/or agency at common law and within the meaning of 7 U.S.C. § 4 and 17 C.F.R. § 1.2.

12. Upon information and belief, at all times pertinent to this Complaint, Linnco, was an Illinois corporation and is now an Illinois limited liability company, with its principal place of business at 233 South Wacker Drive, Suite 2400, Chicago, Illinois 60606; Linnco is registered with the CFTC under Section 4f of the CEA (7 U.S.C. § 6f) as a FCM; Linnco is engaged in, among other things, the business of brokerage in connection with the sale of commodities and commodity futures contracts, as well as options thereon; Linnco is a clearing member of commodity exchanges, in particular the CME, its DSRO; Linnco is a member of the NFA and at all times relevant hereto, Linnco transacted business in the State of New Jersey as a FCM for Plaintiffs.

13. Upon information and belief, and at all times pertinent to this Complaint, Defendant, Jane Doe was at all times alleged herein an employee and/or an agent of Defendant Linnco, acting at various times and simultaneously under the titles of "account executive," "registered representative," "associated person," "commission broker," and "introducing broker" for Linnco and was at all times alleged herein acting within the actual or apparent scope of her employment and/or agency at common law and within the meaning of 7 U.S.C. § 4 and 17 C.F.R. § 1.2.

14. Upon information and belief, at all times pertinent to this Complaint, GNI, Inc. was an Illinois corporation, with its principal place of business at 30 South Wacker Drive, Suite 2009, Chicago, Illinois 60606; GNI Incorporated is registered with the CFTC under Section 4f of the CEA (7 U.S.C. § 6f) as a FCM; GNI Incorporated is engaged in, among other things, the business of brokerage in connection with the sale of commodities and commodity futures contracts, as well as options thereon; GNI is a clearing member of commodity exchanges, in

particular the CBOT, its DSRO; GNI Incorporated is a member of the NFA and at all times relevant hereto, GNI Incorporated transacted business in the State of New Jersey as a FCM for Plaintiffs.

15. Upon information and belief, at all times pertinent to this Complaint, Defendant, GNI Limited was a foreign broker within the meaning of 17 CFR Sections 15 through 17, with offices at Cannon Bridge, Fourth Floor, 25 Dowgate Hill, London, England EC4R 2GN; GNI Limited is in engaged in, among other things, the business of brokerage in connection with the sale of commodities and commodity futures contracts, as well as options thereon.

16. GNI Incorporated and GNI Limited (collectively "GNI") are part of a group or family of companies that hold themselves out to the public and operate under the designation of GNI for all purposes, including, without limitation, advertising, initiating customer accounts, customer services, commodity reports, and annual financial reports. Upon information and belief GNI Incorporated trades futures contracts on a United States contract market as a FCM, the agent for GNI Limited. GNI Incorporated is the agent for GNI Limited for purposes of accepting delivery and service of any communication issued by or on behalf of the CFTC pursuant to 17 C.F.R. Section 15.05(b). GNI Limited is otherwise not registered with the CFTC nor the NFA, as an exempt foreign broker.

17. Upon information and belief, and at all times pertinent to this Complaint, Defendant, Jake Doe was at all times alleged herein an employee and/or an agent of Defendant GNI, acting at various times and simultaneously under the titles of "account executive," "registered representative," "associated person," "commission bro-

ker," and "introducing broker" for GNI and was at all times alleged herein acting within the actual or apparent scope of his employment and/or agency at common law and within the meaning of 7 U.S.C. § 4 and 17 C.F.R. § 1.2.

18. Upon information and belief, at all times pertinent to this Complaint, Dean Witter, was a Delaware corporation, with its principal place of business at 2 World Trade Center, New York, New York 10048; Dean Witter is registered with the CFTC under Section 4f of the CEA (7 U.S.C. § 6f) as a FCM; Dean Witter is engaged in, among other things, the business of brokerage in connection with the sale of commodities and commodity futures contracts, as well as options thereon; Dean Witter is a clearing member of commodity exchanges, in particular the CME, its DSRO; Dean Witter is a member of the NFA and at all times relevant hereto, Dean Witter transacted business in the State of New Jersey as a FCM for Plaintiffs.

19. Upon information and belief, and at all times pertinent to this Complaint, Defendant, Jeff Doe was at all times alleged herein an employee and/or an agent of Defendant Dean Witter, acting at various times and simultaneously under the titles of "account executive," "registered representative," "associated person," "commission broker," and "introducing broker" for Dean Witter and was at all times alleged herein acting within the actual or apparent scope of his employment and/or agency at common law and within the meaning of 7 U.S.C. § 4 and 17 C.F.R. § 1.2.

20. Upon information and belief, at all times pertinent to this Complaint, ING, was an Illinois corporation, with its principal place of business at 233 South Wacker Drive, Suite 5200 – Sears Tower, Chicago, Illinois

60606; ING is registered with the CFTC under Section 4f of the CEA (7 U.S.C. § 6f) as a FCM; ING is engaged in, among other things, the business of brokerage in connection with the sale of commodities and commodity futures contracts, as well as options thereon; ING is a clearing member of commodity exchanges, in particular the CBOT, its DSRO; ING is a member of the NFA and at all times relevant hereto, ING transacted business in the State of New Jersey as a FCM for Plaintiffs.

21. Upon information and belief, and at all times pertinent to this Complaint, Defendant, Jean Doe was at all times alleged herein an employee and/or an agent of Defendant ING, acting at various times and simultaneously under the titles of "account executive," "registered representative," "associated person," "commission broker," and "introducing broker" for ING and was at all times alleged herein acting within the actual or apparent scope of her employment and/or agency at common law and within the meaning of 7 U.S.C. § 4 and 17 C.F.R. § 1.2.

22. Upon information and belief, at all times pertinent to this Complaint, Merrill was a Delaware corporation, with its principal place of business at Merrill Lynch Headquarters, World Financial Center, 250 Vesey Street, New York, New York 10281; Merrill is registered with the CFTC under Section 4f of the CEA (7 U.S.C. § 6f) as a FCM; Merrill is engaged in, among other things, the business of brokerage in connection with the sale of commodities and commodity futures contracts, as well as options thereon; Merrill is a clearing member of commodity exchanges, in particular the CBOT, its DSRO; Merrill is a member of the NFA and at all times relevant hereto, Merrill transacted business in the State of New Jersey as a FCM for Plaintiffs.

23. Upon information and belief, and at all times pertinent to this Complaint, Defendant, James Doe was at all times alleged herein an employee and/or an agent of Defendant Merrill, acting at various times and simultaneously under the titles of "account executive," "registered representative," "associated person," "commission broker," and "introducing broker" for Merrill and was at all times alleged herein acting within the actual or apparent scope of his employment and/or agency at common law and within the meaning of 7 U.S.C. § 4 and 17 C.F.R. § 1.2. George S. Bucknell solicited the account for Merrill on May 7, 1993.

24. Upon information and belief, at all times pertinent to this Complaint, Prudential, was a Delaware corporation, with its principal place of business at 1 Seaport Plaza, 199 Water Street, New York, New York 10292; Prudential is registered with the CFTC under Section 4f of the CEA (7 U.S.C. § 6f) as a FCM; Prudential is engaged in, among other things, the business of brokerage in connection with the sale of commodities and commodity futures contracts, as well as options thereon; Prudential is a clearing member of commodity exchanges, in particular the CBOT, its DSRO; Prudential is a member of the NFA and at all times relevant hereto, Prudential transacted business in the State of New Jersey as a FCM for Plaintiffs.

25. Upon information and belief, and at all times pertinent to this Complaint, Defendant, Jill Doe was at all times alleged herein an employee and/or an agent of Defendant Prudential, acting at various times and simultaneously under the titles of "account executive," "registered representative," "associated person," "commission broker," and "introducing broker" for Prudential and was at all times alleged herein acting within the actual or apparent scope of her employment and/or

agency at common law and within the meaning of 7 U.S.C. § 4 and 17 C.F.R. § 1.2.

26. Upon information and belief, at all times pertinent to this Complaint, Rosenthal, was an Illinois corporation and is now an Illinois limited partnership, with its principal place of business at 216 West Jackson Boulevard, Suite 200, Chicago, Illinois 60606; Rosenthal is registered with the CFTC under Section 4f of the CEA (7 U.S.C. § 6f) as a FCM; Rosenthal is engaged in, among other things, the business of brokerage in connection with the sale of commodities and commodity futures contracts, as well as options thereon; Rosenthal is a clearing member of commodity exchanges, in particular the CME, its DSRO; Rosenthal is a member of the NFA and at all times relevant hereto, Rosenthal transacted business in the State of New Jersey as a FCM for Plaintiffs.

27. Upon information and belief, and at all times pertinent to this Complaint, Defendant, Jill Doe was at all times alleged herein an employee and/or an agent of Defendant Rosenthal, acting at various times and simultaneously under the titles of "account executive," "registered representative," "associated person," "commission broker," and "introducing broker" for Rosenthal and was at all times alleged herein acting within the actual or apparent scope of her employment and/or agency at common law and within the meaning of 7 U.S.C. § 4 and 17 C.F.R. § 1.2.

28. Upon information and belief, at all times pertinent to this Complaint, E D & F, was a Delaware corporation, with its principal place of business at Two World Financial Center, 225 Liberty Street, 27th Floor, New York, New York 10080-6127; E D & F is registered with the CFTC under Section 4f of the CEA (7 U.S.C. § 6f) as a

FCM; E D & F is engaged in, among other things, the business of brokerage in connection with the sale of commodities and commodity futures contracts, as well as options thereon; E D & F is a clearing member of commodity exchanges, in particular the CME, its DSRO; E D & F is a member of the NFA and at all times relevant hereto, E D & F transacted business in the State of New Jersey as a FCM for Plaintiffs.

29. Upon information and belief, and at all times pertinent to this Complaint, Defendant, Joel Doe was at all times alleged herein an employee and/or an agent of Defendant E D & F, acting at various times and simultaneously under the titles of "account executive," "registered representative," "associated person," "commission broker," and "introducing broker" for E D & F and was at all times alleged herein acting within the actual or apparent scope of his employment and/or agency at common law and within the meaning of 7 U.S.C. § 4 and 17 C.F.R. § 1.2.

30. The Defendants, Saul Stone, First Options, Smith Barney, Linnco, GNI, Dean Witter, ING, Merrill, Prudential, Rosenthal, and E D & F, each whom is registered with the CFTC as a FCM, are herein sometimes separately referred to as a "FCM" and sometimes collectively referred to as "FCMs."

31. The Defendants, John Doe, Joan Doe, Jack Doe, Joseph Doe, Jane Doe, Jake Doe, Jeff Doe, Jean Doe, James Doe, Jill Doe and Joel Doe, each of whom are employees of his or her respective Defendant FCM, are hereinafter sometimes collectively referred to as "FCM EMPLOYEES."

32. Clarence Delbridge, III ("Delbridge"), at all times pertinent to this Complaint, was a principal of and employed as a Vice-President of Saul Stone, a member

of the NFA as an Associated Person and elected to the Regional Business Conduct Committee of the NFA for the Central Region. Delbridge further acts as the NFA registration contact for Saul Stone.

33. Thomas H. Stone ("Stone"), at all times pertinent to this Complaint, was a principal and employed as Chairman of the Board of Saul Stone, a member of the NFA as a Floor Broker (which may act in the capacity of an Associated Person) and elected to the Advisory Committee of the NFA for Futures Commission Merchants.

34. The NFA is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 200 West Madison Street, Suite 1600, Chicago, Illinois 60606-3447 and a regional office at 120 Broadway, Suite 1125, New York, New York 10271. The NFA is a Registered Futures Association pursuant to 7 U.S.C. § 17 of the CEA; and at all times relevant hereto, transacted business in the State of New Jersey as the futures industry's self-regulatory organization, entirely financed by the futures industry. No person or firm may engage in any business which involves buying or selling futures contracts for the public without being an NFA member.

NONPARTY CO-CONSPIRATORS

35. Sigma, Inc. ("Sigma") is a Delaware corporation that was engaged in soliciting, pooling and investing client's funds in the securities and commodities futures and options markets. It had its principal offices located at 101 Carnegie Center, Suite 203, Princeton, New Jersey 08540.

36. Kohli, an individual, who, during the relevant period of time, resided in Princeton, Mercer County, New Jersey, solicited investments for and delivered investments for the FCMs, directly and indirectly through FCM EMPLOYEES, to be processed and traded, and conspired with the FCMs and the FCM EMPLOYEES in the manner hereinafter described in detail. Kohli was not registered as a commodity trading advisor ("CTA"), a commodity pool operator ("CPO"), Introducing Broker ("IB") nor an associated person ("AP") pursuant to the CEA, CFTC regulations and the NFA Articles of Incorporation, By Laws, Compliance Rules, Financial Requirements and Registration Requirements (hereinafter referred to collectively as the "NFA Manual") from January 1, 1989 through April 12, 1995. At all relevant times, Kohli was one (1) of two (2) directors and a principal officer of the Sigma Entities, as hereinafter defined.

37. Kohli pleaded guilty to five (5) counts of federal criminal charges, one (1) count in connection with sales of commodity futures, including a charge of commodities fraud on March 6, 1996 for, *inter alia*, his activities alleged in this Complaint. More specifically, Kohli pleaded guilty to five (5) of six (6) counts as set forth in the Information filed with this Court by the United States Attorney on March 6, 1996 under *United States of America v. Chuckles Kohli a/k/a Chuck Kohli*, Criminal No. 96-132 (AET) ("Kohli Criminal Action"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference. On July 17, 1996 Kohli was sentenced to seventy-five (75) months imprisonment by U.S. District Court Judge Anne E. Thompson. Further, as of November 14, 1996 Kohli and the Receiver entered into a Settlement Agreement subject to the approval of this Court, wherein Kohli agreed to a judgment in the

amount of $30,000,000.00, together with the transfer of all assets in his control and a representation by way of Kohli's personal financial statement, that he has no other assets. As such, the pursuit of the claims against Kohli would be illusory, and therefore he is not named as defendant in this action.

38. Chandran is a resident of Lawrence Township, Mercer County, New Jersey, who solicited investments for and delivered investments to the FCMs, directly and indirectly through FCM EMPLOYEES, to be processed and traded, and conspired with the FCMs and the FCM EMPLOYEES in the manner hereinafter described in detail. Chandran was not registered as a CTA, CPO, IB nor an AP pursuant to the CEA, CFTC regulations and the NFA Manual from January 1, 1989 through April 12, 1995. At all relevant times, Chandran was one (1) of two (2) directors and a principal officer of the Sigma Entities, as hereinafter defined. Chandran has filed bankruptcy in the United States Bankruptcy Court for the District of New Jersey under Case No. 96-36569(WHG). Accordingly, Chandran is not named as a defendant in this action, as the automatic stay is in effect under 11 U.S.C. § 362.

39. All acts, omissions, knowledge or intent ascribed in this Complaint to Kohli, Chandran and/or Sigma Entities are hereby alleged to have been known, or but for reckless disregard for the truth and in bad faith, should have been known by the Defendants, FCMs, FCM EMPLOYEES, Delbridge, Stone and the NFA.

40. All acts, omissions, knowledge or intent ascribed in this Complaint to Defendants FCMs, FCM EMPLOYEES, Delbridge and Stone are hereby alleged to have been known, or but for reckless disregard for the truth and in bad faith, should have been known by the NFA.

RELEVANT NONPARTY

41. John L. Manley ("Manley") having his offices c/o Deliotte & Touche LLP, 2 Hilton Court, Parsipanny, New Jersey 07054, was appointed on April 24, 1995 as Permanent Equity Receiver (the "Receiver") for the Sigma Entities, as hereinafter defined, and other affiliated businesses, by the "Order Appointing Equity Receiver" issued by the United States District Court for the District of New Jersey in a matter captioned, *Commodity Futures Trading Commission v. Sigma Inc., Chuck Kohli and N.S. Ramachandran a/k/a Ram Chandran*, Civil Action No. 95-1598(AET) ("Sigma Civil Action").

42. A Report of the Receiver dated October 5, 1995 and filed on October 10, 1995 with the United States District Court, District of New Jersey, Sigma Civil Action indicates that Sigma has neither assets nor any real net worth. As such, and due to Sigma's receivership status, Sigma nor any of the other Sigma Entities are named as Defendants in this Complaint.

43. The Plaintiffs have relied to this point on the Receiver and his pursuit of assets on behalf of Sigma for the benefit of the Plaintiffs. The Receiver provided status reports of his efforts to the Plaintiffs on a regular basis. It was not until the recent proposed Settlement Agreement of November 14, 1996 with Kohli that the Plaintiffs realized they are no longer able to depend on the Receiver to pursue claims on behalf of the Plaintiffs. As such, the filing of this Complaint is a necessary course of action.

PLAINTIFF CLASS ALLEGATIONS

44. The named Plaintiffs bring this action and these allegations as a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a Plaintiff Class consisting of all persons who delivered money to Kohli and Chandran for investment with the Sigma Entities, as hereinafter defined, in commodity futures contracts during the period from January 1, 1989 through April 12, 1995, inclusive (the "Class Period"), excluding Defendants and excluding all persons who received from Kohli and Chandran payments equal to or exceeding the amount of that person's investment with Kohli and Chandran, as well as the principals of any of the Sigma Entities.

45. Approximately $68,000,000.00 was delivered to Kohli, Chandran and the Sigma Entities during the Class Period for investment by approximately 400 persons with the reasonable expectation that Kohli, Chandran and the Sigma Entities were operating in a lawful manner, were holding all licenses and registrations necessary to conduct their business, and were operating under standards established by the appropriate state and Federal regulatory agencies. Accordingly, the Plaintiff Class members are so numerous that joinder of all members is impracticable, if not impossible. The exact number of Class members is unknown to Plaintiffs at this time, but can be ascertained through the records of Kohli, Chandran, Sigma Entities and by discovery.

46. There are questions of law and fact common to the above described Class. Such common questions as to all members of the Plaintiff Class predominate over any questions solely affecting individual members of the Plaintiff Class. Among the questions of law and fact common to the Plaintiff Class are:

(a) Whether the CEA and the CFTC regulations were violated by the Defendants' acts or omissions as alleged herein;

(b) Whether the NFA Manual was violated by the Defendants' acts or omissions as alleged herein;

(c) Whether the Federal Securities and Racketeering Laws were violated by the Defendants' acts or omissions as alleged herein;

(d) Whether Defendants participated in and pursued the conspiracy and common course of conduct alleged herein;

(e) Whether Defendants aided or abetted the commission of criminal, willful, reckless, grossly negligent or negligent acts or omissions concerning the nature of the investments for which the money of the Plaintiff Class members were solicited and obtained;

(f) Whether Defendants owed a fiduciary duty to the members of the Plaintiff Class and, if so, whether that duty was violated by the conduct alleged herein;

(g) Whether Defendants, Delbridge, Stone and NFA acted in bad faith and/or with reckless disregard in failing to enforce the NFA Manual;

(h) The nature and extent of Defendants' actual knowledge of the investment practices of Kohli, Chandran and the Sigma Entities;

(i) Whether Defendants FCMs owed a duty to the general public and the Plaintiff Class to diligently manage, supervise, and investigate the activities and train its personnel FCM

EMPLOYEES to insure that they operated in compliance with the law and CEA and CFTC regulations;

(j) Whether Defendants FCMs owed a duty to the general public and the Plaintiff Class to diligently manage, supervise, and investigate the activities and train its personnel FCM EMPLOYEES to insure that they operated in compliance with the NFA Manual;

(k) Whether Defendants, Delbridge, Stone and NFA owed a duty to the general public and the Plaintiff Class, to act without bad faith while diligently supervising, investigating and disciplining the activities of its members, FCMs and FCM EMPLOYEES to insure that they were doing business with Members of the NFA and that they operated in compliance with the law and CEA, CFTC regulations and the NFA Manual;

(l) Whether Defendants, Delbridge, Stone and NFA owed a duty to the general public and the Plaintiff Class, to act without bad faith while diligently supervising, investigating and disciplining the activities of Kohli, Chandran and the Sigma Entities to insure that they operated in compliance with the law, the CEA, CFTC regulations and the NFA Manual; and,

(m) Whether the Plaintiff Class members have remedies under state law.

47. The claims of the named Plaintiffs, as asserted herein, are typical of the claims of the above described Plaintiff Class. There do not exist any disabling conflicts

among Plaintiff Class members regarding the subject matter of this litigation.

48. The named Plaintiffs will fairly and adequately protect the interests of the above described Plaintiff Class. Plaintiffs have retained counsel competent and experienced in claims of the nature alleged herein.

49. Plaintiffs were informed by Kohli that he and Chandran would act as their agents, either directly or through one or more of the Sigma Entities.

50. A Class Action is superior to other available means for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, since the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation of a case of this magnitude makes it impossible for Plaintiff Class members, individually, to redress the wrongs done to them, and therefore requires concentration of all such claims in one forum. There will be no significant difficulty in the management of this action as a Plaintiff Class action. The membership of the above described Plaintiff Class does not have any interest in individually controlling the prosecution of separate actions against Defendants as opposed to treatment of these actions as a Class Action.

FACTUAL BACKGROUND

51. Since 1989, Kohli and Chandran, have solicited funds from members of the public, including the Plaintiffs, to invest in commodities for future delivery (pursuant to 7 U.S.C. § 7), options on commodities (pursuant to 7 U.S.C. § 6c) and other commodities, futures contracts and commodity options, including options not traded on a national exchange through commodity pools.

Kohli and Chandran used the business names of Sigma, Inc. ("Sigma"), Geronimo, Inc. a/k/a Geronimo Group ("Geronimo"), Vol Partners, L.P. ("Vol") and Savid Group ("Savid") through which all their solicited business was conducted for the so-called commodity pools (hereinbefore and hereinafter collectively referred to as the "Sigma Entities").

52. Plaintiffs were informed by Kohli that he and Chandran would act as their agents, either directly or through one more of the Sigma Entities.

53. The Plaintiffs signed Powers of Attorney attached hereto as Exhibit "B," giving Kohli, Chandran and the Sigma Entities discretionary authority over investing funds and trading decisions in order to act on behalf of the Plaintiffs as their agents with the FCMs. Neither Kohli, Chandran nor the Sigma Entities delivered to Plaintiffs a Disclosure Document pursuant to 17 C.F.R. Section 4.21 and NFA Compliance Rule 2-13 and in the form required by 17 C.F.R. Section 4.21. The Plaintiffs did not provide Kohli, Chandran nor the Sigma Entities with a written receipt for any such Disclosure Documents, nor were the Plaintiffs requested to do so.

54. Plaintiffs were informed their funds would be pooled and used to trade in the currency markets, and in other markets. For example, as described by Kohli and Chandran in Sigma's promotional materials, the Currency Derivative Portfolio "replicates investment in underlying currencies through currency options." In similar fashion, Kohli and Chandran through Sigma and Vol, purported to trade Plaintiffs' funds in "index options, foreign currencies and currency options."

55. Because of the business activities in which they engaged, Kohli, Chandran and the Sigma Entities were required by Federal and New Jersey laws to register with

the CFTC, the Securities and Exchange Commission, the New Jersey Bureau of Securities and to become members of the NFA. They never registered with, or became members of, any of those regulatory or self-regulatory authorities.

56. During the Class Period Kohli and Chandran sold rights to participate in at least one partnership, Vol, and through Sigma, various portfolios for the purpose of investing pools funded in foreign currencies traded on exchanges, futures and options in foreign currencies traded on commodity and security exchanges, index options and other securities and commodities.

57. In its promotional materials, Kohli and Chandran claimed to have more than $260,000,000.00 under "advisory management" in its various commodity pools. Plaintiffs were told that, from 1990 to 1994, Kohli and Chandran, through Sigma's commodity pools, had annual rates of return ranging from 14.58 to 102.01 percent.

58. Since at least 1992, monthly reports issued by Kohli and Chandran, through the Sigma Entities, to the Plaintiffs who invested in its various commodity pools have rarely, if ever, reflected any losses. The purported profits were entirely fictitious.

59. When early investors sought to withdraw their funds or their purported profits, Kohli and Chandran paid them from funds invested by subsequent investors. Such fraudulent activity is commonly referred to as a " "Ponzi" scheme.

60. Upon information and belief, as of February 28, 1995, reports issued by Kohli and Chandran, through the Sigma Entities, to Plaintiffs showed, in the aggregate, that the commodity pools operated by Kohli and

Chandran had assets totalling at least $68,000,000.00. Of this amount, approximately $55,000,000.00 was lost through trading activities. Additionally, $5,000,000.00 was spent by Kohli, Chandran and the Sigma Entities and $11,600,000.00 was returned to investors.

61. Upon information and belief, Kohli, Chandran and the Sigma Entities used part of the $5,000,000.00 to entertain FCM EMPLOYEES, in particular, without limitation, APs of Merrill, in December, 1994 at a Florida golf trip sponsored by the Sigma Entities and APs of First Options at golf outings, football games and various parties in either New Jersey or Las Vegas in 1994.

62. Upon information and belief, some of the investors' funds were use to pay for personal trips to Florida, among other places, by at least one FCM EMPLOYEE (and his family), Steve Kaczmer ("Kaczmer"), who was employed first by Defendant Linnco (which held 10 accounts on behalf of the Plaintiffs by way of the Sigma Entities) and then by the Defendant First Options (which held 23 accounts on behalf of the Plaintiffs by way of the Sigma Entities).

63. Upon information and belief, certain of the investors' funds were also used to pay $10,000.00 per month salary to Kaczmer who, while trading during the day at First Options, traded at night for the Sigma Entities from his home terminal. The operating expenses for this arrangement were paid by Kohli from a bank account(s) in one or more of the Sigma Entities' names. That same FCM employee also received from Kohli the sum of $60,000.00 in the form of a "loan" for improvements to his home, only $40,000.00 of which was repaid. The balance of the loan was "forgiven" by Kohli.

64. Sometime between approximately January 1, 1989 and April 12, 1995 Kohli, Chandran and the Sigma

Entities, none of whom were registered with the CFTC nor the NFA, approached the Defendants FCMs to place all orders to purchase or sell futures contracts through said Defendants, each of whom were then and continue to be registered as a FCM pursuant to the CEA 7 U.S.C. § 6f and a member of the NFA. All orders to purchase or sell futures contracts with the funds solicited by Kohli, Chandran and the Sigma Entities would be placed directly through the Defendants FCMs or in the alternative, indirectly through FCM EMPLOYEES of their respective FCMs.

65. Once Kohli, Chandran and the Sigma Entities secured the initial core of Plaintiff investors, they induced additional persons to invest through the Sigma Entities' false appearance of legitimacy. The appearance of legitimacy stemmed from the fact that although only a properly registered and licensed FCM or CPO may hold customers' money in an omnibus account (an account with a clearing member firm of an exchange, like the Chicago Board of Trade, opened for the purpose of holding other people's money for trading commodities by a non-member broker), the FCMs allowed the Sigma Entities to deposit customers' funds in an account with the FCMs even though they were not registered as an FCM or a CPO. The FCMs treated all of the accounts of the Sigma Entities as one omnibus account managed by Kohli and Chandran.

66. Once Kohli, Chandran and the Sigma Entities created the false appearance that the Sigma Entities held large sums of money, were profitable and legitimate, the false appearance spread by word of mouth from current investors to their friends and relatives.

67. The following account numbers of Kohli, Chandran and the Sigma Entities, identified with each of the

following Defendants (signed only by Kohli and Chandran and designated as a Special Account), are as follows:

Defendant (FCM)	Statement Period	Account Name	Account Number
Saul Stone:	02/91 - 06/93	Sigma	18126
	10/94 - 05/95	Sigma	18126
	07/91 - 05/95	Geronimo	18127
	07/91 - 03/95	Geronimo	18125
	12/91 - 03/95	Geronimo	18124
First	01/94 - 07/94	Geronimo	1 GR
Options:	07/93 - 04/95	Geronimo	9 GR
	08/94 - 12/94	Geronimo	90087 SCROT
	06/94 - 04/95	Geronimo	90087 SCROT
	01/93 - 04/95	Geronimo	90087 GRNM1
	08/92 - 04/95	Geronimo	90087 GRNMO
	08/92 - 04/95	Sigma	90069 SIGMA
	03/94 - 03/94	Sigma	SIGM2
	03/94 - 03/94	Sigma	SCREW
	03/94 - 04/95	Sigma	90069 NAILS
	01/94 - 03/94	Sigma	90069 SIGM1
	03/94 - 04/95	Sigma	90069 ELWOD
	01/93 - 04/95	Geronimo	90087 GRNM2
	04/93 - 04/95	Geronimo	90087 GRNM3
	06/94 - 04/95	Geronimo	90087 CAPUT
	07/94 - 03/95	Geronimo	90087 GRNMO
	06/93 - 05/94	Geronimo	90087 GRNMO
	08/93 - 05/94	Geronimo	90087 GRNMO
	05/93 - 05/94	Geronimo	90087 GRNMO
	09/93 - 05/94	Geronimo	90087 GRNMO
	10/93 - 05/94	Geronimo	90087 GRNMO
	08/92 - 07/93	Sigma	30073288
	09/92 - 07/93	Geronimo	30034664

Defendant (FCM)	Statement Period	Account Name	Account Number
Smith Barney:	11/92 - 08/93	Geronimo	01k-476226
	10/92 - 03/93	Geronimo	01k-476196
	10/92 - 03/93	Geronimo	01k-476196
	11/92 - 07/93	Geronimo	016-476234
Linnco:	06/93 - 09/93	Sigma	181 18204
	06/93 - 12/93	Geronimo	181 18205
	04/94 - 06/94	Geronimo	181 18205
	06/93 - 09/93	Geronimo	181 18208
	04/94 - 06/94	Geronimo	181 18208
	06/94 - 06/94	Geronimo	181 18206
	06/94 - 06/94	Geronimo	181 18207
	06/94 - 06/94	Geronimo	181 18205 non-regulated
	06/94 - 06/94	Geronimo	181 18205
	06/94 - 06/94	Geronimo	181 18205
GNI:	03/95 - 05/95	Geronimo	GERO/X I1H J BN
	06/94 - 04/95	Geronimo	GERONIMO USD
	06/94 - 05/95	Geronimo	GERO/X I1H J BN
	06/94 - 04/95	Geronimo	GERONIMO DM
	06/94 - 05/95	Geronimo	GERO/X I1H J BN
	06/94 - 04/95	Geronimo	APACHE/Q 32 K B
	06/94 - 04/95	Geronimo	APACHE/Q 32 K B
	06/94 - 04/95	Geronimo	APACHE/Q 32 K B
	06/94 - 04/95	Geronimo	APACHE/Q 32 K B
	06/94 - 04/95	Geronimo	APACHE/Q 32 K B
	12/94 - 04/95	Geronimo	APACHE/Q 32 K B
	12/94 - 04/95	Geronimo	APACHE/Q 32 K B
	03/95 - 03/95	BTB Group Ltd. (Kohli)	BTBX/X I1H J BN
Dean Witter:	10/94 - 06/95	Geronimo	237-069460
	07/94 - 12/94	Geronimo	69460

Defendant (FCM)	Statement Period	Account Name	Account Number
ING:	05/93 - 05/95	Geronimo	02550
	06/93 - 08/93	Geronimo	25153: seg funds
	07/93 - 09/93	Geronimo	25153: non seg funds
	07/93 - 09/93	Geronimo	25153: BP
	08/93 - 08/93	Geronimo	25153: FF
	07/93 - 08/93	Geronimo	25154: seg funds
Merrill:	07/94 - 12/94	Geronimo	877 48584R
	05/93 - 09/93	Geronimo	713 07D92
	10/93 - 05/95	Geronimo	877 07S19
Prudential:	08/92 - 11/94	Sigma	ABT 960274 NSeg
	04/92 - 11/94	Geronimo	ABT 959861
	08/92 - 11/94	Sigma	ABT 960274 Seg
	06/92 - 11/94	Geronimo	ABT 960207
	08/91 - 01/93	Sigma	ONS-96770-13
	01/92 - 03/93	Geronimo	ONS-968021-13
	07/92 - 09/92	Sigma	ONS-968358-13
	07/92 - 10/92	Sigma	ABT-960274-08
	07/92 - 05/94	Geronimo	ABT-960207-08
Rosenthal:	03/95 - 04/95	Geronimo	85 85920
E D & F:	05/93 - 07/93	Geronimo	C DEC 47526

The accounts were to be used as a pooled repository for funds solicited by Kohli and Chandran. Any profits earned through trading in the aforesaid accounts, were in turn to be split between the solicited investors, on the one hand and Kohli, Chandran and the Sigma Entities on the other hand.

68. At all times pertinent hereto, Defendants FCMs opened Special Accounts for investment in commodities, for future delivery and/or options on commodities for

Kohli and Chandran, through business names of Sigma, Inc., Geronimo, Inc. a/k/a Geronimo Group, Vol Partners, L. P. and Savid Group, as Third Party Account Controllers without CFTC registration and NFA membership.

69. Upon information and belief, the Special Accounts which were opened at the Defendants FCMs were all corporate and/or partnership accounts whose forms were completed by Kohli. In connection with opening a new account, the FCMs would have and should have required the Sigma Entities to submit certain documentation and information, including financial statements and/or information of the principals of the company as well as certification indicating who from the company was authorized to conduct trades and transfers of money in and out of the account, which they failed to so do.

70. Upon information and belief, the financial information which Kohli provided to the FCMs on the account forms was inconsistent with the magnitude of the trading activity conducted in the accounts and the substantial losses sustained in the accounts over the relevant period. Indeed, upon information and belief, the volume of trading and the trading losses as sustained in the accounts frequently exceeded the equity in the accounts and the net worth of the Sigma Entities as shown on the financial information submitted to the defendants FCMs.

71. In light of the material discrepancies between the reported financial information of the Sigma Entities, the volume of trading conducted in the accounts, the substantial losses which were being sustained in the accounts and the number of different individuals who were listed with trading authority on the accounts

(Kohli, Chandran, Dan Johnson, Dave Lan, Bob McMahon, Anthony Caputo, Steve Redler, Mike Knesivitch, Eric Robertson), Defendants FCMs were aware that the accounts were being operated as commodity pools comprised of funds solicited from third party investors, therefore requiring registration pursuant to CFTC regulations and NFA Rules. The actions of the FCMs were reckless and without regard for the truth. The FCMs failed to perform minimal due diligence with regard to the background of Kohli, Chandran and the Sigma Entities.

72. Kohli, Chandran and the Sigma Entities, all Third Party Account Controllers, with discretion over the accounts of the Plaintiffs, neither registered with the CFTC as a CPO pursuant to 7 U.S.C. Section 6n., 17 CFR Section 4.1*et seq.*, nor properly claimed exemption from registration as a CPO. Kohli, Chandran and the Sigma Entities failed to deliver to Plaintiffs a written statement, describing, among other things, the exemption pursuant to 17 CFR § 4.13 (the "Written Statement") and failed to file copies of the Written Statement with the CFTC and the NFA.

73. Upon information and belief, some of the funds in the Sigma Entities' Special Accounts at certain of the Defendants FCMs were improperly transferred by these Defendants FCMs, upon instructions from Kohli, to personal accounts maintained by Kohli, individually and/or jointly with his then wife. In the aggregate these transfers totalled at least $710,000.00.

74. Specifically, and as part of the wrongful conversion of the funds in the Special Accounts of the Sigma Entities to Kohli and/or his then wife, a total of $590,000.00 was transferred from at least on account in the name of Geronimo at Merrill to Kohli's personal

account at Charles Schwab & Co., Inc. ("Schwab") or Dean Witter.

75. In addition, and as part of the wrongful conversion of the funds in a Merrill account in the name of Geronimo, $80,000.00 was transferred from that account to Kohli's personal joint account with his then wife, at Schwab.

76. Specifically, and as part of the wrongful conversion of the funds in a Prudential account in the name of Sigma, $40,000.00 was transferred from that account to Kohli's personal joint account with his then wife, at Schwab.

77. Upon information and belief, the Defendants, FCMs and FCM EMPLOYEES never received an acknowledgment from the Plaintiffs for receipt of the required Disclosure Document pursuant to 17 CFR § 4.24 from Kohli, Chandran and the Sigma Entities, nor the Written Statement from Kohli, Chandran and the Sigma Entities explaining why a Disclosure Document is not required pursuant to NFA Compliance Rule 2-8(e).

78. Upon information and belief, the Defendants, FCMs and FCM EMPLOYEES failed to verify whether Kohli, Chandran and the Sigma Entities made the required filings of the Written Statement of exemption pursuant to 17 CFR § 4.13.

79. Upon information and belief, Defendants, FCMs and FCM EMPLOYEES did not confirm delivery of the required Disclosure Document by the Third Party Account Controllers, Kohli, Chandran and the Sigma Entities to the Plaintiffs pursuant to 17 CFR § 4.21 of the CFTC regulations and NFA Compliance Rule 2-13.

80. Upon information and belief, and at all times pertinent to this Complaint, Defendants, FCMs and FCM EMPLOYEES made a practice of opening Special Accounts for and over which Kohli and Chandran, under the business names of the Sigma Entities, exercised discretion as Third Party Account Controllers, neither making inquiry as to the financial condition of Kohli, Chandran and the Sigma Entities nor inquiry as to the source of funds deposited into those accounts and status of the CFTC registration and the NFA membership of Kohli, Chandran and the Sigma Entities.

81. The Defendants, FCMs and FCM EMPLOYEES failed to investigate and know their customer. Upon information and belief the aforesaid Defendants failed to perform minimum due diligence by not contacting the CFTC and the NFA to gather information regarding Kohli, Chandran and the Sigma Entities as the agents for the Plaintiffs and pursuant to NFA Compliance Rule 2-8(e).

82. At all times pertinent to this Complaint, Defendants, FCMs and FCM EMPLOYEES violated NFA Articles of Incorporation, Article III, § 1(f) and NFA Bylaw 1101 by carrying accounts, accepting and handling transactions in commodity futures contracts on behalf of the Sigma Entities, non-Members of the NFA who were required to be registered with the CFTC and to refrain from transacting business with an unregistered person pursuant to the statutory makeup of 7 U.S.C. Sections 6d., 6e., 6k. and 6n.

83. Upon information and belief, Defendants, FCMs and FCM EMPLOYEES did not deliver to Plaintiffs the required Disclosure Document in the form mandated by 17 CFR 1.55 pursuant to 17 CFR 1.55 and NFA Compliance Rule 2-26.

84. During the Class Period, the Sigma Entities' accounts collectively indicated a value of approximately $68,000,000.00 as of February 28, 1995. As of April 12, 1995, the accounts collectively had lost all of their equity, due to the trades of Kohli and Chandran who were the individuals responsible for the accounts according to the account records held by Defendants, FCMs. All of this activity resulted from trades made by Kohli and Chandran with funds solicited from third party investors, the Plaintiffs, by Kohli and Chandran. All daily and monthly trading statements for the Sigma Entities accounts were sent directly to Kohli's offices at Sigma, Inc. at 101 Carnegie Center, Suite 203 Princeton, New Jersey 08540. The Defendants FCMs did not deliver monthly trading statements to the Plaintiffs.

85. At various times, the accounts of Kohli and Chandran, under the business names of the Sigma Entities, carried lower balances with Defendants, FCMs (separately and collectively) than necessary to meet the withdrawal demands of the Plaintiffs. At various times, the accounts of the Sigma Entities carried negative balances. As such, Kohli and Chandran had to solicit additional funds from new investors so that the new investors' money could be placed in the accounts, all the time concealing from the Plaintiffs the true status of their accounts, which had, experienced enormous diminution in their values.

86. Defendants, FCMs, FCM EMPLOYEES, Delbridge and Stone knew or should have known that most of the funds in the accounts of the Sigma Entities during the period of January 1, 1989 through April 12, 1995 had been obtained by Kohli and Chandran from third party investors, the Plaintiffs, by false pretenses and without proper regard to the requirements of the CEA, CFTC Regulations and the NFA Manual concerning commod-

ity pool investments, all as set forth with particularity in the complaints on file with this Court in the Sigma Civil Action and the Kohli Criminal Action, Exhibit "A" attached hereto.

87. During the period from January 1, 1989 through March 1, 1995 Defendants, FCM and FCM EMPLOYEES knew, or should have known, that the accounts of the Sigma Entities contained funds belonging to investors, as principals, other than Kohli and Chandran.

88. Defendants, FCMs, FCM EMPLOYEES, Delbridge and Stone knew, or had reason to believe, that the funds that Kohli, Chandran and the Sigma Entities were soliciting were coming from the Plaintiff Class members, who were innocent investors, who believed their money was being pooled legally and properly invested in the commodities market, through their agents, Kohli, Chandran and the Sigma Entities.

89. Commencing on or after January 1, 1989, Kohli, Chandran and the Sigma Entities did knowingly, with the intent to deceive, or with reckless disregard for the truth or falsity of the statements they made and would make, solicit funds for investment in the commodities market from the Plaintiffs who constitute the Class herein, by making false and misleading statements of material facts to them, *inter alia*, substantially as follows:

(a) That Plaintiff Class members' funds would be invested in the commodities market in a pooled account, but in a thoroughly legal way;

(b) That Plaintiff Class members would either not be subject to any risk of loss or the least possible risk;

(c) That any profits earned in the account would be split 75% to the Plaintiff Class members and

25% to Kohli, Chandran and the Sigma Entities;

(d) When asked, Kohli and Chandran would tell the Plaintiff Class members that past experience showed a rate of return of approximately 14.58% to 102.12% of funds invested;

(e) That they, Kohli, Chandran and the Sigma Entities, were very experienced in the commodity futures market and would give them monthly accountings;

(f) That Plaintiff Class members could take their money out of the commodities market at any time upon thirty (30) or ninety (90)days notice, as the case may be;

(g) That Kohli, Chandran and the Sigma Entities used large, well established brokerage houses as their clearing agents and that they maintained huge accounts with the Defendants FCMs; and,

(h) Investors', other than Plaintiffs, prior investment(s) with Kohli, Chandran and the Sigma Entities had earned substantial profits as shown by the accounting which Kohli and Chandran had provided the Plaintiffs.

90. In addition, Kohli, Chandran, FCMs, FCM EMPLOYEES, Delbridge, Stone, and the NFA knowingly, with intent to deceive, with reckless disregard for the truth or conscious avoidance of the truth, in bad faith, withheld and/or failed to disclose to Plaintiff investors, *inter alia*, the following:

(a) That Kohli, Chandran and the Sigma Entities were not registered and/or licensed CPO or in

any other respect licensed to trade commodity futures contracts for third parties, although they were required to be so licensed, if engaged in trading commodity futures for the Plaintiffs;

(b) That Kohli, Chandran and the Sigma Entities were not members of the NFA in any capacity;

(c) That Kohli, Chandran and the Sigma Entities were not registered and/or licensed under either state or Federal laws or regulations as a securities dealer, broker or other person permitted to sell securities to third parties;

(d) That the securities solicited and sold to Plaintiff Class members were not registered as securities under either state or Federal laws or regulations;

(e) That Kohli and Chandran were not investing all funds obtained from the Plaintiffs in commodity futures contracts or other legitimate investments, but were also using said funds to pay phony "profits" and for other business and personal purposes;

(f) That Defendants, FCMs and FCM EMPLOYEES earned commissions on every commodity futures contract trade made through FCMs;

(g) That Defendants, FCMs had not followed the rules and regulations of the CFTC and the NFA Manual concerning disclosure of information as required to be made to third-party investors;

(h) That some of Plaintiff investors' funds were going to repay Defendants, FCMs for debit balances in the accounts;

(i) That Kohli and Chandran had very little, or no knowledge, about commodity futures contract trading and very little or no experience as an investor in commodity futures contracts;

(j) That Kohli and Chandran were not keeping or maintaining accurate and complete records of the handling of all sums received from members of the Plaintiff Class and/or funds invested in commodity futures contracts;

(k) In investing and managing the Plaintiffs' funds, Kohli, Chandran and the Sigma Entities had not followed the rules and regulations of the CFTC and the NFA Manual concerning the operations of such pools, the disclosures required to be made to pool participants, the records that must be made and kept by pool operators, and the availability of such records to third-party investors;

(l) Most, or all of the accounting and other statements which Kohli, Chandran and the Sigma Entities had made to the Plaintiffs, had reflected fictitious profits and equities, and other false and misleading information as to material matters of fact;

(m) Kohli, Chandran and the Sigma Entities were becoming more and more deeply indebted to the Plaintiffs as a result of their misuse of the funds entrusted to them for investment purposes; and,

(n) Kohli, Chandran and the Sigma Entities had never earned any annual net income for the Plaintiffs on a consolidated basis through their investment of funds obtained from them.

91. During the Class Period, Kohli, Chandran and the Sigma Entities solicited funds from the Plaintiff Class members in the approximate sum of $66,600,000.00. Unbeknownst to any of the Plaintiff Class members, Kohli, Chandran and the Sigma Entities actually invested less than the full amount solicited, directly with the FCMs in the commodities market; the remainder of the funds (a) went to other investments, (b) were returned to other investors as phony "profits," or (c) were diverted to Kohli's and Chandran's personal use in ways that did not benefit Plaintiff Class members. In actuality, Kohli's and Chandran's investment program turned out to be a "Ponzi" scheme, a fact which was known or should have been known in the exercise of reasonable care, and due diligence by the Defendants, FCMs, FCM EMPLOYEES, Delbridge and Stone. Of the $66,600,000.00 invested, approximately $11,600,000.00 was returned to the Plaintiff Class members by Kohli and Chandran as alleged "profits" on their investments or return of capital.

92. During March, 1995 and prior to April 12, 1995, Plaintiffs attempting to withdraw funds from Kohli, Chandran and the Sigma Entities were unable to do so. On April 12, 1995, without prior notice to customers, Kohli, Chandran and the Sigma Entities ceased business operations and closed their offices. Upon information and belief, there is approximately $273,160.34 held by the Receiver.

93. In September 1982, Defendant, Saul Stone had received actual notice of a similar "Ponzi" scheme of fraud and deceitful practices perpetrated through, and with the assistance of Saul Stone's offices and personnel. Said fraudulent practices took place primarily in the State of Illinois, beginning in 1980 through the activities of Robert B. Serhant and others named as defendants

therein, including Saul Stone, and are more particularly set forth in a complaint filed in the United States District Court for the Northern District of Illinois under No. 82-C-6611. This put Saul Stone on notice, as to the likelihood and foreseeability of such "Ponzi" schemes developing, when it did not diligently supervise the activities of its personnel and APs and when it did not comply with the rules and regulations of the CFTC, CME and NFA Manual.

94. In June 1985, Defendant, Saul Stone had also received actual notice of a similar "Ponzi" scheme of fraud and deceitful practices perpetrated through, and with the assistance of Saul Stone's offices and personnel. Said fraudulent practices took place primarily in the State of Washington, beginning in May 1980 through the activities of Bonnie Frost and others, with Saul Stone named as a Defendant therein, and are more particularly set forth in a complaint filed in the United States District Court for the Eastern District of Washington under No. C-85-522-RJM. This put Saul Stone on further notice, as to the likelihood and foreseeability of such "Ponzi" schemes developing, when it did not diligently supervise the activities of its personnel and APs and when it did not comply with the rules and regulations of the CFTC, CME and NFA Manual.

95. The failure of Defendants, FCMs to properly and diligently train, manage, supervise and investigate the activities of their respective FCM EMPLOYEES, as well as Kohli, Chandran and the Sigma Entities, pursuant to 17 CFR Section 166.3, facilitated the occurrence of the activities complained herein.

96. On April 17, 1995 the CFTC filed the Sigma Civil Action against Kohli and Chandran alleging among other things fraud in connection with commodity futures and

options transactions, including the solicitation of funds from innocent third parties to be invested in pooled accounts in contravention of the CEA and CFTC regulations. In addition thereto, Kohli pleaded guilty to the criminal complaint filed in the Kohli Criminal Action alleging among other things commodities fraud. The General outline of the "Ponzi" scheme was disclosed in the Sigma Civil Action and Kohli Criminal Action. Furthermore, it was admitted that Kohli and Chandran were not registered with the CFTC nor members of the NFA.

97. Defendants, FCMs and FCM EMPLOYEES carried accounts, accepted orders and handled transactions in commodity futures contracts, for or on behalf of parties, not members of the NFA, who were also required to be registered with the CFTC. No disciplinary actions have been taken by the Defendant NFA against the Defendants FCMs and FCM EMPLOYEES. Further, no thorough, diligent and vigorous investigative action has been initiated by NFA concerning the management and conduct of the FCMs and FCM EMPLOYEES. The NFA receives compensation from the trading activities of the FCMs. The greater the number of trades, the greater the compensation to the NFA. The NFA has acted with reckless disregard in failing to discipline Saul Stone.

98. In the *Matter of Saul Stone & Company,* NFA Central Regional Business Conduct Committee, Case No. 86-6(c) (July 30, 1986), Defendant herein, Saul Stone was charged on May 23, 1986 with a violation of NFA Bylaw 1101 and violations of NFA Compliance Rule 2-7 for carrying the account of a person, Oxborrow, who was required to be registered as a CPO and was not so registered, nor registered as a member of the NFA, whom Saul Stone knew or should have known was required to be registered as a commodity pool operator and a member of the NFA. The facts of that case arise

out of the same facts as the Civil Action referred to in paragraph 79 of this Complaint, in the United Sates District for the Eastern District of Washington, Civil Action No. C-85-522-RJM.

99. Even after prior notices of alleged violations of the NFA Manual by Saul Stone, Defendant, NFA still took no disciplinary action for violations of the CEA, CFTC regulations and the NFA Manual against the Defendant, Saul Stone and the other Defendants herein, First Options, Smith Barney, Linnco, GNI, Dean Witter, ING, Merrill, Prudential, Rosenthal, E D & F and the FCM EMPLOYEES. The Defendant NFA has made no proper investigation of the activities of these Defendants.

100. The NFA is a part of a referral system with the states, CFTC, NASD and SEC. Through the referral system, these agencies refer matters to the NFA when such matters pertain to an NFA Member.

101. A Special Account is any account which has a reportable position as defined in Part 15 of the CFTC Regulations, which provides, in pertinent part, that a reportable position to the CFTC in options is a position in the put option or separately in the call option of a specified option expiration date that generally equals or exceeds fifty (50) options in futures contracts. FCMs must report to the CFTC and NFA any account in which the positions equal or exceed these limits. When identifying a Special Account a FCM should note the registration status of the person as a CTA or a securities investment advisor pursuant to 17 CFR § 17.01.

102. Defendant Linnco submitted a Report Form 102 (Identification of Special Accounts which is filed by a FCM) to the CFTC for the purpose of reporting Third Party Account Controllers, therein listing Sigma, Geron-

imo and Kohli. A number of the Form 102s on file with the CFTC indicate that an individual named "Mr. Chuck" Kohli was the Managing Director of Geronimo. Defendants FCMs failed to submit Form 102 on a daily and weekly basis as required by 17 CFR Section 17.01. The NFA knew or should have known of these Special Accounts, yet it took no action.

103. At various times beginning in 1989, Defendants FCMs authorized and permitted Defendants FCM EMPLOYEES to hold themselves out to Kohli, Chandran and the Sigma Entities as the respective agents of the FCMs and as such the FCMs accepted orders from Kohli, Chandran and the Sigma Entities for commodity futures transactions on the CME and CBOT and other commodity exchanges. Defendants, FCMs and FCM EMPLOYEES each received substantial commissions for such transactions. The amount of commissions earned, increased in direct proportion to the amount of trading done by Kohli and Chandran. There were approximately 10,000 trades per month. The number of trades were excessive under the circumstances, contrary to the best interests of the investors, and constituted "churning" of the account. Due to the high volume of commissions generated by FCM EMPLOYEES for their benefit and the benefit of the FCMs, the FCMs had little or no motivation to conduct a thorough and vigorous investigation of FCM EMPLOYEES and the activities of Kohli, Chandran and the Sigma Entities.

104. Had the FCMs diligently supervised the activities of FCM EMPLOYEES as required by NFA Compliance Rule 2-9, as well as Kohli, Chandran and the Sigma Entities, or made any reasonable investigation of the practices of Kohli, Chandran and the Sigma Entities, the FCMs would have discovered Kohli's, Chandran's

and the Sigma Entities' fraudulent investment scheme and the material misrepresentations and omissions.

105. Had the FCM EMPLOYEES diligently supervised the activities of Kohli, Chandran and the Sigma Entities, or made any reasonable investigation of the practices of Kohli, Chandran and the Sigma Entities, the FCMs would have discovered Kohli's, Chandran's and the Sigma Entities' fraudulent investment scheme and the material misrepresentations and omissions.

106. The NFA received substantial income due to the trades of Kohli, Chandran and the Sigma Entities. In general, the NFA receives substantial income due to the trading activity of Defendants FCMs and FCM EMPLOYEES on a "round-turn basis" and on a "per-trade basis" for a customer who is not a member of the exchange where the trade is made. Therefore, due to the high volume of income generated by Defendants, FCMs for the benefit of the NFA, the NFA had an ulterior motive with little or no motivation to conduct a thorough and vigorous disciplinary investigation of the FCMs.

107. Had the Defendant, NFA diligently and in some cases, i.e., Saul Stone, due to its past history, audited the activities of the FCMs with greater frequency, or made any reasonable investigation of the practices of the FCMs, the NFA would have discovered Kohli's, Chandran's and the Sigma Entities' fraudulent investment scheme and the material misrepresentations and omissions, as well as the violations of the CEA, CFTC regulations and the NFA Manual by the FCMs and the FCM EMPLOYEES.

108. In the case of Defendants, Delbridge and Stone, at all relevant times hereto, both were active Committee Members elected by the Members of the NFA to a Subcommittee of the NFA. In the case of Delbridge, he was

elected to the NFA Central Regional Business Conduct Committee, which receives reports for possible infraction(s) of NFA rules. Delbridge and Stone were principals, officers and director(s) of Saul Stone. Delbridge and Stone knew or should have known of the violations of the CEA and the NFA Manual by Saul Stone, as principals thereof, in relationship to Kohli, Chandran and the Sigma Entities.

109. Due to the high volume of commissions generated for the benefit of Defendant, Saul Stone, Delbridge and Stone had an ulterior motive with little or no motivation to conduct a thorough and vigorous disciplinary investigation of Defendant Saul Stone.

110. The failure of Delbridge and Stone to report the violations of the CEA and the NFA Manual to the NFA is a bad faith breach of their fiduciary duties and responsibilities as NFA Committee Members. Delbridge and Stone, on behalf of Saul Stone, willfully aided and abetted the Defendant, NFA from enforcing the NFA's Articles of Incorporation, Bylaws and Compliance Rules.

CLAIM I
(COMMODITY EXCHANGE ACT)

111. Plaintiffs reallege and incorporate by this reference paragraphs 1 through 110, inclusive, as paragraph 111 of Claim 1.

112. By virtue of the activities described in this Complaint in connection with orders to make, and the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other person, Kohli, Chandran and the Sigma Entities have:

(a) Cheated defrauded, or attempted to cheat and defraud the Plaintiffs in violation of Section 4b(a)(i) of the Act, 7 U.S.C. § 6b(a)(i) (Supp. IV 1992); and,

(b) Willfully made or caused to be made to such persons a false report or statement thereof, or willfully entered or caused to be entered for such persons a false record thereof, in violation of Section(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii) (Supp. IV 1992).

113. By virtue of the activities described in this Complaint, Kohli, Chandran and the Sigma Entities by use of the mails and other means or instrumentalities of interstate commerce, directly or indirectly, employed devices, schemes, or artifices to defraud Plaintiffs and prospective third-party investors, and have engaged in transactions, practices or a course of business, that operate as a fraud or deceit, upon Plaintiffs and prospective third-party investors, in violation of Section 4 o(1) of the CEA, 7 U.S.C. § 6 o(1) (Supp. IV 1992).

114. Section 1a(4) of the CEA, 7 U.S.C. § 1a(4) (Supp. IV 1992), defines CPO as any person engaged in a business, that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market.

115. Pursuant to Commission Regulations 33.2, 17 C.F.R. § 33.2 (1993), the provisions of Section 1a(4) (Supp. IV 1992), shall apply to commodity option trans-

actions that are subject to the requirements of Part 33 of the Regulations, 17 C.F.R. § 33.1, *et seq.*, (1993), as though such provisions included specific references to commodity option transactions.

116. By engaging in the activities referred to in the Complaint, Kohli and Chandran have attempted to act as a CPO, as that term is defined in Section 1a(4) of the CEA, 7 U.S.C. § 1a(5) (Supp. IV 1992).

117. With certain expectations not relevant hereto, pursuant to Section 4m(1) of the CEA, 7 U.S.C. § 6m(1) (Supp. IV 1992), it is unlawful for any CPO, without being registered under the CEA, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

118. By engaging in the activities referred to in this Complaint, Kohli and Chandran have attempted to act as a CTA, as the term is defined in 7 U.S.C. § 1a(5).

119. With certain exceptions not relevant hereto, pursuant to 7 U.S.C. § 6m(1), it is unlawful for any CTA, without being registered under the CEA, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CTA.

120. Throughout the relevant time period, Kohli, Chandran and the Sigma Entities were engaged in advising others as to the value or advisability of trading in commodities and managing their funds for a fee.

121. Pursuant to Sections 13(a) and 13(b) of the Act, 7 U.S.C. §§ 13 c(a) and 13c(b) (Supp. IV 1992), Kohli and Chandran are each liable for any violations of Section 4m(l) of the CEA, 7 U.S.C. § 6m(l) (Supp. IV 1992), in that they each willfully aided and abetted such violations and/or, directly or indirectly, controlled persons who have violated the CEA regulations and did not

act in good faith or knowingly induced, directly or indirectly, the acts, omissions or, failures constituting such violations.

122. The Commodity Act further provides, in pertinent part, that:

> It shall be unlawful for any person to be associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission (CFTC) under this chapter. (7 U.S.C. § 6K(2))

and

> It shall be unlawful for any person to be associated with a commodity trading advisor as a partner, officer, employee consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission (CFTC) this chapter as a associated person or such commodity trading advisor. (7 U.S.C. § 6k(3)).

123. This Claim is brought pursuant to the CEA, 7 U.S.C. § 25(a) *et seq.*, the regulations established pursuant thereto by the CFTC and under the provisions of the NFA Manual. It is asserted against Defendants, FCMs, directly and through the acts of each of their FCM EMPLOYEES, as their respective agents or

employees, and FCM EMPLOYEES, in that they violated the CEA and the NFA Manual and willfully aided and abetted such violations.

124. Neither Kohli nor Chandran were registered with the CFTC as an AP of either a CPO or CTA, nor did they meet any exemption from such registration. Both Kohli and Chandran acted in violation of 7 U.S.C. § 6k for failing to register as APs of a CPO and CTA.

125. Neither Kohli nor Chandran were registered with the CFTC as a FCM or a CPO, nor did either meet an exemption from such registration. Therefore, neither Kohli nor Chandran could solicit, accept and/or pool customers' money.

126. Neither Kohli nor Chandran were registered with the CFTC as a CTA nor did either meet an exemption from such registration. Therefore, neither Kohli nor Chandran could direct the trading of customers' poiled money.

127. The Defendants, FCMs and FCM EMPLOYEES carried accounts, accepted orders and handled commodity futures contracts for Kohli, Chandran and the Sigma Entities, all non-Members of the NFA, exceeding their authority, as agents for the Plaintiffs.

128. Kohli, Chandran and the Sigma Entities had the authority as agents for the Plaintiffs to accept money and make direct deposits thereof with the FCMs, but were not, as unregistered persons, authorized to direct trades for investing of Plaintiffs money. As such, Kohli, Chandran and the Sigma Entities were a fiction under the CEA of which the FCMs and FCM EMPLOYEES were aware, or with required minimal due diligence would have discovered. As unregistered persons they did not exist under the CEA.

129. The trading of the Plaintiffs' money by the FCMs was unauthorized pursuant to 7 U.S.C. Section 6b.

130. During all relevant times herein, Defendants FCMs owned or held membership and were admitted to membership representation on a contract market or were given member's trading privileges thereon as a FCM within the meaning of § 2 of the CEA, as amended. Defendants, FCM EMPLOYEES were each first an AP with their respective FCMs within the meaning of the CEA and were each second an agent of their respective FCMs pursuant to common law and within the meaning of 7 U.S.C. § 4 and 17 C.F.R. § 1.2.

131. By virtue of such agency and AP relationship, the FCMs each had a duty, under Rule 932 of the CME, Rule 423.03 of the CBOT and 17 C.F.R. §§ 1.2 and 166.3 of the Regulations of the CFTC, to supervise each of their respective FCM EMPLOYEES.

132. In connection with the making of contracts of sale of commodities, in interstate commerce and purchase of an interest or participation in a commodity pool, on behalf of members of the Plaintiff Class, Defendants, FCMs, either directly or as willful aiders and abetters, cheated and defrauded Plaintiffs and willfully deceived or attempted to deceive Plaintiffs in regard to such purchases of contracts and participation in commodity pool(s) through deceptive practices, primarily including, but not necessarily limited to the facts set forth this Complaint and the churning alleged in this Complaint.

133. In addition to the facts and representations alleged above, during the Class Period Defendants, FCMs, directly or through each of their FCM EMPLOYEES, as their respective agents, knew or recklessly disregarded facts showing that:

(a) Kohli, Chandran and the Sigma Entities were engaged in soliciting accounts without being registered with the CFTC nor a Member of the NFA;

(b) Kohli, Chandran and the Sigma Entities were engaged in soliciting accounts and were making the representations alleged herein to the Plaintiff Class members;

(c) Kohli, Chandran and the Sigma Entities were guaranteeing the Plaintiffs against loss or agreeing to limit such loss, in violation of § 1.56 of the CFTC Regulations;

(d) Customer funds were being pooled in violation of § 4b of the CEA, 7 U.S.C. § 6b, (Regulation § 1.20 *et seq.*) without their knowledge or permission and were being used for speculation in the futures trading;

(e) Unusually large trading volumes and losses were being generated in the Sigma Entities accounts; and,

(f) Profits and losses were arbitrarily being allocated among such accounts at the discretion of Kohli and Chandran, in violation of CME Rules 536, 541, and 853.

134. In addition to the facts and representations alleged above, Defendants, FCMs aided and abetted the scheme to cheat, deceive and defraud the Plaintiff Class members by, *inter alia:*

(a) Authorizing and allowing their respective FCM EMPLOYEES to hold themselves out as their respective agents and to act as their respective

agents in soliciting investors like Kohli, Chandran and the Sigma Entities;

(b) Authorizing and allowing their respective FCM EMPLOYEES to engage in substantial and unusually large trades, both in number and volume, in violation of Rule 444 of the CME, through its offices and facilities and without requiring them, respectively, to disclose the true identity of the investors and nature of the accounts for which the trades were being made;

(c) Failing to diligently supervise the activities of their FCM EMPLOYEES as their respective agents and employees in soliciting accounts, obtaining Plaintiffs funds and using funds obtained in futures trading, in violation of Rule 932 of the CME, Rule 423.03 of the CBOT and 17 C.F.R. § 166.3 of the CFTC Regulations; and,

(d) Failing to properly and diligently investigate fraudulent and illegal conduct by their respective FCM EMPLOYEES in the conduct of their respective business with Kohli, Chandran and the Sigma Entities.

135. Defendants, FCMs' and FCM EMPLOYEES' actions were in violation of the CEA, as amended, specifically including, but not necessarily limited to 7 U.S.C. §§ 6b, 6k, 6o and § 25(a), the NFA Manual, specifically including but not limited to NFA ByLaw 1101 and NFA Compliance Rule 2-8(e). The violations of the registration provisions of the CEA committed by Kohli, Chandran and the Sigma Entities were willfully aided and abetted by the Defendants, FCMs and FCM EMPLOYEES. As a direct and proximate result of said

Defendants' violations of the CEA and NFA Manual, the members of the Plaintiff Class have suffered substantial damages to be proved with particularity at time of trial.

WHEREFORE, Plaintiffs demand judgment, jointly and severally against Defendants, FCMs and FCM EMPLOYEES, as follows:

(a) For an award of compensatory damages equal to the amount of loss sustained by the Plaintiff Class members and commissions and fees paid to Defendants by the Plaintiff Class members as a result of Defendants' violation of law (in an amount which will be proved with more particularity at time of trial).

(b) For an award of damages to compensate the Plaintiff Class members for the loss of alternative investment opportunities as part of compensatory damages.

(c) For an award of damages to compensate the Plaintiff Class members for the loss due to unexpected adverse tax consequences.

(d) For Plaintiff Class members' attorney's fees, costs and disbursements incurred herein.

(e) Pre-judgment interest.

(f) For such other and further relief as the Court deems just and proper.

CLAIM II
(BREACH OF CONTRACT)

136. Plaintiffs reallege and incorporate by this reference paragraphs 1 through 135, inclusive, as paragraph 136 of Claim II.

137. This Claim is brought pursuant to New Jersey common law regarding contracts and is asserted against Defendants, FCMs, FCM EMPLOYEES and the NFA. The NFA establishes and enforces rules and standards for customer protection. The Sigma Entities are customers for whose express benefit and protection these agreements, rules and standards were adopted. The Plaintiffs are third party beneficiaries of the agreements between the NFA and its Members.

138. The FCMs and the FCM EMPLOYEES are Members of the NFA. As Members of the NFA, the aforesaid Defendants are bound by its Rules—its Rules are in the nature of agreements with all of its Members. The NFA has Compliance Rules, enforcement of which affect the integrity of the organization and its Members.

139. The NFA Rules in many instances are a memorialization of parts of the CEA. In particular, the requirement for persons to register pursuant to 7 U.S.C. Sections 6d., 6e., 6k. and 6n., and therefore, it is a violation to transact business if one is not registered or with one who is not registered.

140. The activities of CTAs and CPOs are affected with a national public interest as are all transactions in commodities involving the sale thereof for future delivery. 7 U.S.C. Sections 5 and 61.

141. Article III of the Articles of Incorporation of the NFA set forth in Section 1(a) one of the fundamental purposes of the NFA, as follows, "the adoption, admin-

istration and enforcement as to the following persons of requirements regarding fair practice and designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect the public interest.

"(i) Members that are registered with the Commission as Futures Commission Merchants, Commodity Pool Operators, Commodity Trading Advisors, Introducing Brokers or Leverage Transaction Merchants; and,

"(ii) associates (See Article XVIII)."

142. The general public, and therefore the Plaintiffs, are third party beneficiaries of the NFA Manual and the agreements between the NFA and its Members, including the Defendants, FCMs, FCM EMPLOYEES, Delbridge and Stone.

143. As a result of the Defendants', FCMs', FCM EMPLOYEES', Delbridge's and Stone's failure to comply with the NFA Manual, more particularly, without limitation, the CEA, NFA Bylaw 1101 and NFA Compliance Rule 2-8(e), they have breached their agreements with the NFA and as a result thereof, breached their agreements with the Plaintiffs.

144. Defendants', FCMs', FCM EMPLOYEES', Delbridge's and Stone's actions, in breach of their respective agreements with the NFA, and therefore the Plaintiffs as third party beneficiaries thereof, are in violation of the CEA, as amended, the NFA Manual, specifically including, but not limited to NFA Bylaw 1101 and NFA Compliance Rule 2-8(e). As a direct and proximate result of said Defendants' violations of the CEA and NFA Manual, the members of the Plaintiff Class have

suffered substantial damages to be proved with particularity at time of trial.

145. As a result of the Defendant's, NFA's failure to enforce the CEA, NFA Bylaws and Compliance Rules of the NFA Manual, more particularly, without limitation, NFA Bylaw 1101 and NFA Compliance Rule 2-8(e), the NFA has breached its agreement with the NFA Members and as a result thereof, breached its agreement with the Plaintiffs.

146. Defendant's, NFA's actions, in breach of its agreement with the NFA Members, and therefore the Plaintiffs as third party beneficiaries thereof, is in violation of the CEA, as amended, the NFA Manual, specifically including, but not limited to NFA Bylaw 1101 and NFA Compliance Rule 2-8(e). As a direct and proximate result of the NFA's violations of the CEA and NFA Manual, the members of the Plaintiff Class have suffered substantial damages to be proved with particularity at time of trial.

WHEREFORE, Plaintiffs demand judgment, jointly and severally, against all Defendants, as follows:

(a) For an award of compensatory damages equal to the amount of loss sustained by the Plaintiff Class members and commissions and fees paid to Defendants by the Plaintiff Class members as a result of Defendants' violation of law (in an amount which will be proved with more particularity at time of trial).

(b) For an award of damages to compensate the Plaintiff Class members for the loss of alternative investment opportunities as part of compensatory damages.

(c) For an award of damages to compensate the Plaintiff Class members for the loss due to unexpected adverse tax consequences.

(d) Punitive Damages.

(e) For Plaintiff Class members' attorney's fees, costs and disbursements incurred herein.

(f) Pre-judgment interest.

(g) For such other and further relief as the Court deems just and proper.

CLAIM III
(BAD FAITH FAILURE TO ENFORCE NFA RULES)

147. Plaintiffs reallege and incorporate by this reference paragraphs I through 146, inclusive, as paragraph 147 of Claim III.

148. This Claim is brought pursuant to the CEA, 7 U.S.C. § 25(b) and the regulations established pursuant to the CFTC. It is asserted against the Defendant NFA, in that the NFA acted in bad faith in failing to enforce its own Bylaws and Rules, as set forth in the NFA Manual, pursuant to 7 U.S.C § 21(b)(8).

149. This Claim is brought pursuant to the CEA 7 U.S.C. § 25 and the regulations established pursuant to the CFTC, and is asserted against the Defendants, Delbridge and Stone, in that they knew or should have known of the violations of the CEA and the NFA Manual by Saul Stone in relationship to Kohli, Chandran and the Sigma Entities. The failure of Delbridge and Stone to report the violations of the CEA and the NFA Manual to the NFA is a bad faith breach of their fiduciary duties and responsibilities as NFA Committee Members. Delbridge and Stone, on behalf of Saul Stone, willfully

aided and abetted Defendant, NFA from enforcing the NFA's Articles of Incorporation, Bylaws and Compliance Rules.

150. Neither Kohli, Chandran, nor any of the Sigma Entities were registered with the CFTC as either a CPO or a CTA, nor did they satisfy the conditions necessary to meet any exemption from such required registration. As such, Kohli, Chandran and the Sigma Entities acted in violation of 7 U.S.C. § 6m in operating as unregistered CTAs and Kohli, Chandran and the Sigma Entities operated as unregistered CPOs and CTAs utilizing the mails and other means and instrumentalities of interstate commerce.

151. The Commodity Act further provides, in pertinent part, that:

> It shall be unlawful for any person to be associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission (CFTC) under this chapter. (7 U.S.C. § 6K(2))

and

> It shall be unlawful for any person to be associated with a commodity trading advisor as a partner, officer, employee consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any per-

son or persons so engaged, unless such person is registered with the Commission (CFTC) under this chapter as a associated person or such commodity trading advisor. (7 U.S.C. § 6k(3)).

152. The NFA Bylaw 1101 provides, in pertinent part, that:

> "No Member may carry an account, accept an order or handle a transaction in commodity futures contracts for or on behalf of any non-Member of NFA, or suspended Member, that is required to be registered with the Commission (CFTC) as an FCM, IB (Introducing Broker), CPO, CTA or LTM (Leverage Transaction Merchants), and that is acting in respect to the account, order or transaction for a customer, a commodity pool or participant therein, a client of a commodity trading advisor, or any other person." (Chapter 11)

153. Both Kohli and Chandran were the only officers and directors of the Sigma Entities and as such were APs of the Sigma Entities. Accordingly, both ere required to register with the CFTC as Associated Persons.

154. Neither Kohli nor Chandran were registered with the CFTC as an AP of either a CPO or CTA, nor did they meet any exemption from such registration. Both Kohli and Chandran acted in violation of 7 U.S.C. § 6(k) for failing to register as APs of a CPO and CTA.

155. Neither Kohli nor Chandran were registered with the CFTC as either a CPO or CTA, nor did they meet an exemption from such registration.

156. The Commodity Act further provides, in pertinent part, that:

> It shall be unlawful for any person to be associated with a futures commission merchant (FCM) as a partner, officer or employee (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation or acceptance of customer's orders (other than a clerical capacity) or (ii) the supervision of any person or persons so engaged unless such person is registered with the Commission (CFTC) under this chapter. (7 U.S.C. § 6k(l)).

157. The Defendants, FCMs and FCM EMPLOYEES carried accounts, accepted orders and handled commodity futures contracts for the Plaintiffs through Kohli, Chandran and the Sigma Entities, all non-Members of the NFA.

158. During all relevant times herein, Defendants, Delbridge and Stone were employed by Saul Stone, a FCM and a named Defendant herein. As such, each was an agent of Saul Stone pursuant to common law and within the meaning of 7 U.S.C. § 4 and 17 C.F.R. § 1.2.

159. During the course of their respective positions as employees, officers and director(s) of Saul Stone, Delbridge and Stone knew, or should have known, of the actions of Kohli, Chandran and the Sigma Entities that violated the registration provisions of the CEA.

160. During all relevant times herein, Defendants, Delbridge and Stone were NFA Committee Members. As such, each was an agent of the NFA.

161. The NFA knew, or should have known, of the actions of Kohli, Chandran and the Sigma Entities that violated the registration provisions of the CEA as well as the association between the FCMs and the FCM EMPLOYEES with Kohli, Chandran and the Sigma

Entities. The NFA has taken no disciplinary action against the FCMs and FCM EMPLOYEES for violations of the CEA, CFTC Regulations and the NFA Manual.

162. The Defendant, NFA has acted in bad faith in failing to enforce its own Rules, as set forth in the NFA Manual, pursuant to 7 U.S.C. § 21(b)(8) which provides, in pertinent part, that:

> ". . . its [NFA] Members and persons associated with its members shall be appropriately disciplined, by expulsion, suspension, fine, censure, or being suspended or barred from being associated with all members, or any other fitting penalty, for any violations of its rules."

The NFA failed to prevent fraudulent and manipulative practices among its Members to protect customers and option customers and customer funds and to promote fair dealing with the public pursuant to 17 CFR § 170.5 as well as § 17(b) of the CEA.

163. The failure of Delbridge and Stone to report the violations by Kohli, Chandran, the Sigma Entities, Saul Stone and John Doe of the CEA and the NFA Manual to the NFA was a breach of their fiduciary duties and responsibilities as NFA Committee Members and was in bad faith. Delbridge and Stone, on behalf of Saul Stone, willfully aided and abetted Defendant, NFA from enforcing the NFA's Articles of Incorporation, Bylaws and Compliance Rules.

164. The bad faith actions of the Defendants, Delbridge, Stone and NFA were in violation of the CEA, as amended, specifically including, but not necessarily limited to 7 U.S.C. §§ 6b and 6k and the NFA Manual, specifically including, but not limited to NFA Bylaw 1101 and NFA Compliance Rule 2-8(e). Such bad faith

actions by Delbridge and Stone on behalf of the Defendant, Saul Stone, willfully aided and abetted the Defendant, NFA, to fail to enforce its Compliance Rules and NFA Bylaw 1101, resulting in violation of the CEA, 7 U.S.C §§ 6b, 6k, 21 and 25, thereby causing the members of the Plaintiff Class to suffer substantial damages to be proved with particularity at time of trial.

165. By reason of the conspiracy among the Defendants, Saul Stone, Delbridge, Stone and the NFA, the NFA failed to enforce, and, instead, violated its Articles of Incorporation, Bylaws and Compliance Rules and, likewise, failed to perform the duties imposed on it by, and thereby violated the provisions of the 7 U.S.C. §§ 25(b)(2) and 21 (b)(8).

WHEREFORE, Plaintiffs demand judgment, jointly and severally, against Defendants, Saul Stone, Delbridge, Stone and NFA, as follows:

(a) For an award of compensatory damages equal to the amount of loss sustained by the Plaintiff Class members and commissions and fees paid to Defendants by the Plaintiff Class members as a result of Defendants' violation of law (in an amount which will be proved with more particularity at time of trial).

(b) For an award of damages to compensate the Plaintiff Class members for the loss of alternative investment opportunities as part of compensatory damages.

(c) For an award of damages to compensate the Plaintiff Class members for the loss due to unexpected adverse tax consequences.

(d) Pre-judgment interest.

(e) For such other and further relief as the Court deems just and proper.

CLAIM IV
(NEW JERSEY UNIFORM SECURITIES LAW)

166. Plaintiffs reallege and incorporate by this reference paragraphs 1 through 165, inclusive, as paragraph 166 of Claim IV.

167. This claim is brought pursuant to the New Jersey Uniform Securities Law, N.J.S.A. 49:3-47 *et al.*, and is asserted against Defendants, FCMs and FCM EMPLOYEES, named herein as primary offenders or, in the alternative, as secondary offenders. Liability of Defendants, FCMs is premised on their direct activities, and in the alternative, on the activities of their FCM EMPLOYEES, as their respective agents or employees.

168. The members of the Plaintiff Class invested funds through Kohli, Chandran and the Sigma Entities, for the purpose of gaining profit solely by the efforts of Kohli and Chandran, through a common enterprise, including, *inter alia*, the sharing of profits as alleged previously in this Complaint. All commodity futures contract purchases and other investment decisions for investment of Plaintiffs' funds were made by Kohli and Chandran. Said investments constituted investment contract securities.

169. The agreement forms, attached hereto as Exhibit "C" and incorporated herein by this reference, prepared by Kohli, Chandran and the Sigma Entities and executed and delivered to members to the Plaintiff Class, constituted certificates of interest or participation in a profit-sharing agreement and/or evidence of indebtedness and

were securities within the meaning of New Jersey Uniform Securities Law, N.J.S.A. 49:3-49(m).

170. During the Class Period, Kohli and Chandran, in the offer and sale of certain securities, namely the above referenced certificates of interest and participation in profit-sharing agreements, evidence of indebtedness and investment contracts issued by them in the names of the Sigma Entities, which pertained to participation interests in one or more commodity futures pooled accounts operated and managed, or to be operated and managed by them, did knowingly and willfully, directly and indirectly, employ a devise, scheme an artifice to defraud, obtain money and property from Plaintiff Class members by means of untrue statements of material facts and omissions to state material facts necessary, in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaged in transactions, practices and a course of business which would and did operate as a fraud and deceit upon the Plaintiff Class members purchasing said securities, all as more particularly described in this Claim and the paragraphs incorporated herein.

171. The facts and allegations set forth in this Complaint more specifically describe said devices, schemes and artifices to defraud, said untrue statements and omitted facts, and said transactions, practices and course of business of Kohli, Chandran, the Sigma Entities, the FCMs and the FCM EMPLOYEES, which operated as a fraud and deceit upon the Plaintiff Class members.

172. Defendants, FCMs and FCM EMPLOYEES knew, or in the exercise of reasonable care, should have known that Kohli, Chandran and the Sigma Entities were offering and/or selling securities through the false and deceitful means, alleged in this Complaint and

Defendants, FCMs and FCM EMPLOYEES intentionally, with reckless disregard or conscious avoidance of the truth, or negligently consented to, participated in, aided, abetted and conspired with Kohli, Chandran and the Sigma Entities in said illegal securities sales to the Plaintiff Class members.

173. Defendants, FCMs, directly and primarily participated in, aided and abetted and conspired in the illegal practices of Kohli, Chandran and the Sigma Entities alleged herein by, *inter alia:*

(a) Accepting orders and purchasing commodity futures contracts with funds the FCMs knew or should have known were procured illegally from Plaintiff Class members;

(b) Paying commissions on said trades to Defendants, FCM EMPLOYEES;

(c) Retaining commissions on said trades;

(d) Failing to investigate, directly or through their respective agents, the investment practices of Kohli, Chandran and the Sigma Entities;

(e) Knew, or should have known the source of funds for Kohli's, Chandran's and the Sigma Entities' Investments were those of the Plaintiff Class members;

(f) Knew, or should have known, that Kohli and Chandran were not licensed CPOs;

(g) Failing to properly and diligently supervise the activities of FCM EMPLOYEES at their respective offices;

(h) Failing to inform the Plaintiff Class members, of the false nature of the representations, and

material omissions alleged in this Complaint; and,

(i) Receiving and disbursing Plaintiffs funds, delivered to it by Kohli, Chandran and the Sigma Entities, through their respective FCM EMPLOYEES without regard for the reasonable expectations of the investors involved, or the methods used for procurement of said funds.

174. Defendants, FCM EMPLOYEES, directly and primarily participated in, aided and abetted and conspired in the illegal practices of Kohli and Chandran alleged herein by, *inter alia*:

(a) Failing to inform the Plaintiff Class members of the false nature of the representations and material omissions alleged herein;

(b) Placing trades and accepting commissions from Defendants, FCMs for said trades, and upon information and belief, accepting other compensation from Kohli, Chandran and the Sigma Entities for their respective services, when they knew Kohli, Chandran and the Sigma Entities were trading with money provided by Plaintiff Class members and yet were not licensed CPOs and that said money was obtained by fraud and deceit; and,

(c) Receiving and disbursing Plaintiffs' funds as delivered to them, respectively, by Kohli, Chandran and the Sigma Entities without regard for the reasonable expectations of the Plaintiffs or the methods used for procurement of said funds.

175. At the time that all of Plaintiff Class members' funds were delivered to Kohli, Chandran and the Sigma Entities for purchase of said securities, the Plaintiff Class Members were ignorant of the falsity of the said representations and/or omissions of material facts, necessary to be known by the Plaintiffs, to enable them to make informed decisions regarding said securities.

176. The Plaintiff Class members justifiably relied on the alleged misrepresentations and omissions and were thereby induced to invest in said securities.

177. The Plaintiff Class members would not have invested in said securities, if they had known the truth, concerning the material facts or omissions referred to above.

178. By reason of the foregoing and as a proximate result thereof, the Plaintiff Class members have been damaged in an amount to be proved at trial and Defendants, FCMs and FCM EMPLOYEES are liable for said damages as primary offenders, plus interest at twelve (12%) percent per annum, pursuant to the New Jersey Uniform Securities Law, N.J. S.A. 49:3-47, *et seq.*, and N.J.S.A. 49:3-71.

179. In the alternative, Defendants, FCMs and FCM EMPLOYEES are secondarily liable to Plaintiffs under the New Jersey Uniform Securities Law N.J.S.A. 49:3-47, *et seq.*, and N.J.S.A. 49:3-71, by virtue of their positions as controlling persons, who were able to directly and/or indirectly control Kohli, Chandran and the Sigma Entities, by eliminating the means for Kohli, Chandran and the Sigma Entities to invest Plaintiffs' funds in commodity futures contracts and by exercise of control over the accounts of the Sigma Entities. Specifically, *inter alia*, Kohli and Chandran had full discretion in the trading of all contracts purchased through said accounts.

Defendants, FCMs and FCM EMPLOYEES had contractual, statutory and regulatory rights and obligations of control over Kohli, Chandran and the Sigma Entities and said accounts. Defendants, FCMs and FCM EMPLOYEES provided substantial assistance to Kohli, Chandran and the Sigma Entities, as alleged in this Complaint, and failed to exercise their control and investigatory powers over the investment practices of Kohli, Chandran and the Sigma Entities, in a prudent manner, and thereby aided in the perpetration of the illegal acts alleged herein. Defendants, FCMs and FCM EMPLOYEES had a special or fiduciary duty to Plaintiffs under statute, regulations and common law. All damages suffered by Plaintiffs as alleged herein, are directly and proximately due to said activities of said Defendants as controlling persons.

WHEREFORE, Plaintiffs demand judgment, jointly and severally, against Defendants FCMS and FCM EMPLOYEES, as follows:

(a) For an award of compensatory damages equal to the amount of loss sustained by the Plaintiff Class members and commissions and fees paid to Defendants by the Plaintiff Class members as a result of Defendants' violation of law (in an amount which will be proved with more particularity at time of trial).

(b) For an award of damages to compensate the Plaintiff Class members for the loss of alternative investment opportunities as part of compensatory damages and at no less than twelve (12%) percent per annum per N.J.S.A. 49:3-71.

(c) For an award of damages to compensate the Plaintiff Class members for the loss due to unexpected adverse tax consequences.

(d) Punitive Damages.

(e) For Plaintiff Class members' attorney's fees, costs and disbursements incurred herein.

(f) Pre-judgment interest.

(g) For such other and further relief as the Court deems just and proper.

CLAIM V
(SECURITIES ACT OF 1933)

Omitted.

CLAIM VI
(SECURITIES EXCHANGE ACT OF 1934)

Omitted.

CLAIM VII
(BREACH OF FIDUCIARY DUTIES)

180. Plaintiffs reallege and incorporate by this reference paragraphs 1 through 179, inclusive, as paragraph 180 of Claim VII.

181. This claim is brought pursuant to common law and is asserted against Defendants, FCMs, FCM EMPLOYEES, Delbridge, Stone and the NFA named herein. Liability of Defendants is premised on their direct activities and, in the alternative, in the case of the

FCMs on the activities of their respective FCM EMPLOYEES.

182. Defendants, FCMs, FCM EMPLOYEES, Delbridge, Stone and the NFA knew, or should have known, in the exercise of reasonable care that money invested by Kohli and Chandran were the property of the Plaintiff Class members. Said Defendants, were fiduciaries or quasi-fiduciaries, with respect to the Plaintiff Class members in connection with futures contracts and the funds deposited with them by Plaintiff Class members through Kohli and Chandran and were required to exercise reasonable and prudent discretion in connection with such transaction in the best interest of Plaintiffs.

183. Defendants, Delbridge, Stone and the NFA knew or should have known of their obligations under the CEA pursuant to 7 U.S.C. §§ 21 and 25 to enforce the Rules of the NFA, in particular, Bylaw 1101.

184. Defendants, FCMs and FCM EMPLOYEES violated their fiduciary duties to Plaintiff Class members by acts and omissions including, *inter alia*, the following:

(a) Defendants, FCMs failed to provide a reasonable amount of training to and diligent supervision of their agents, FCM EMPLOYEES;

(b) Defendants failed to inform the Plaintiff Class members of the risks associated with speculation in the commodity futures market;

(c) Defendants accepted money from Kohli and Chandran for investment when they knew, or should have known, or had reason to believe that the money was obtained from the Plaintiffs Class and that Kohli and Chandran were not CPOs; and,

(d) Defendants, FCMs and FCM EMPLOYEES through non-disclosure of facts known to them, or which they had reason to know, deceived the Plaintiff Class members in connection with risks involved in speculating in commodities futures accounts, the profits generated in Plaintiffs' accounts, documentation and paperwork generated in connection with Plaintiffs' accounts, the placement of specific orders in Plaintiffs' accounts, and the commissions gathered from said accounts.

185. Defendants, FCM EMPLOYEES directly and primarily participated in, aided and abetted and conspired in the illegal practices of Kohli and Chandran alleged herein by, *inter alia*:

(a) Failing to inform the Plaintiff Class members of the false nature of the representations and material omissions alleged herein;

(b) Placing trades and accepting commissions from the FCMs for said trades, upon information and belief and accepting other compensation from Kohli and Chandran for their respective services when they knew Kohli and Chandran, were trading with money provided by Plaintiff Class members and yet were not licensed CPOs and that said money was obtained by fraud and deceit; and,

(c) Receiving and disbursing Plaintiffs funds delivered to them, respectively, by Kohli and Chandran without regard for the reasonable expectations of the Plaintiffs or the methods used for procurement of said funds.

186. Defendants, Delbridge, Stone and NFA, directly and primarily participated in, aided and abetted and conspired in the illegal practices of Kohli, Chandran and the Sigma Entities, alleged herein by, *inter alia*:

(a) Breach of their fiduciary duties by Delbridge and Stone for failure to fulfill their duties and obligations as NFA Committee Members;

(b) Breach of its fiduciary duties by NFA in failing to enforce its Bylaws and Compliance Rules for the good of the public interest;

(c) The bad faith actions of Delbridge, Stone and the NFA in failing to enforce the CEA, as amended, and the NFA Manual;

(d) The bad faith actions of Delbridge, Stone and the NFA in failing to diligently supervise, frequently audit, investigate and discipline the activities of its Members, FCMs and FCM EMPLOYEES, to insure that they were doing business with Members of the NFA and that they operated in compliance with the CEA, CFTC regulations and the NFA Manual; and,

(e) The bad faith actions of Defendants, Delbridge, Stone and the NFA in failing to diligently supervise, investigate and discipline the activities of Kohli, Chandran and the Sigma Entities to insure that they operated in compliance with the CEA, CFTC regulations and the NFA Manual.

187. By reason of said breach of fiduciary duties by Defendants, FCMs, FCM EMPLOYEES, Delbridge, Stone and the NFA, the Plaintiff Class members have

suffered substantial damages the exact amount to be proved at time of trial.

WHEREFORE, Plaintiffs demand judgment, jointly and severally, against the Defendants, as follows:

(a) For an award of compensatory damages equal to the amount of loss sustained by the Plaintiff Class members and commissions and fees paid to Defendants by the Plaintiff Class members as a result of Defendants' violation of law (in an amount which will be proved with more particularity at time of trial).

(b) For an award of damages to compensate the Plaintiff Class members for the loss of alternative investment opportunities as part of compensatory damages.

(c) For an award of damages to compensate the Plaintiff Class members for the loss due to unexpected adverse tax consequences.

(d) Punitive Damages.

(e) For Plaintiff Class members' attorney's fees, costs and disbursements incurred herein.

(f) Pre-judgment interest.

(g) For such other and further relief as the Court deems just and proper.

CLAIM VIII
(NEGLIGENCE)

188. Plaintiffs reallege and incorporate by this reference paragraphs 1 through 187, inclusive, as paragraph 188 of Claim VIII.

189. This claim is brought pursuant to common law and is asserted against Defendants, FCMs and FCM EMPLOYEES named herein. Liability of Defendants, FCMs is premised on their direct activities and, in the alternative, on the activities of their respective FCM EMPLOYEES as their agents or employees.

190. Defendants, FCMs and FCM EMPLOYEES failed to exercise reasonable care, and were negligent and careless, by numerous acts and omissions alleged in this Complaint, including, but not necessarily limited to the following:

(a) Defendants, FCMs and FCM EMPLOYEES were negligent in failing to conduct more thorough investigations, of the source of funds, invested by Kohli and Chandran, doing business under the names of the Sigma Entities;

(b) Upon information and belief, Defendants, FCMs and FCM EMPLOYEES were negligent in assisting and encouraging Kohli and Chandran in soliciting investors for commodity futures trades under the business names of the Sigma Entities;

(c) Defendants, FCMs were negligent in failing to adequately train their respective agents, FCM EMPLOYEES, with regard to the laws and regulations governing commodity futures trading and the NFA Ethics Rules; and,

(d) Defendants, FCMs were negligent in failing to adequately and diligently supervise the actions of their respective agents, the FCM EMPLOYEES and in failing to diligently supervise the activities at their respective offices and solici-

tation of accounts traded through their respective offices.

191. As a direct and proximate result of the negligent acts of Defendants, FCMs and FCM EMPLOYEES the Plaintiff Class members have suffered substantial damages, the exact amount to be proved at time of trial.

WHEREFORE, Plaintiffs demand judgment, jointly and severally, against Defendants, FCMs and FCM EMPLOYEES, as follows:

(a) For an award of compensatory damages equal to the amount of loss sustained by the Plaintiff Class members and commissions and fees paid to Defendants by the Plaintiff Class members as a result of Defendants' violation of law (in an amount which will be proved with more particularity at time of trial).

(b) For an award of damages to compensate the Plaintiff Class members for the loss of alternative investment opportunities as part of compensatory damages.

(c) For an award of damages to compensate the Plaintiff Class members for the loss due to unexpected adverse tax consequences.

(d) For Plaintiff Class members' attorney's fees, costs and disbursements incurred herein.

(e) Pre-judgment interest.

(f) For such other and further relief as the Court deems just and proper.

CLAIM IX
(RICO, 18 U.S.C. § 1962(c))

192. Plaintiffs reallege and incorporate by this reference paragraphs 1 through 191, inclusive, as paragraph 192 of Claim IX.

193. The ("person(s)") as defined in 18 U.S.C. § 1961(3) are Kohli and Chandran.

194. The ("enterprise(s)") as defined as 18 U.S.C. § 1961(4), which was engaged in and the activities of which affect interstate commerce are the Sigma Entities.

195. The activities of Kohli, Chandran and the Sigma Entities were conducted through a pattern of racketeering activities, which included numerous acts of fraud over a period of approximately five (5) plus years against at least four hundred (400) investors through the use of United States Mail, including the mailing of accounts statements and activity reports, and interstate wires, including telephone calls from Kohli and Chandran, in furtherance of the Kohli and Chandran scheme to defraud by means of the Sigma Entities, in violation of 18 U.S.C. § 1341 and 18 U.S.C. § 1343, including, but not limited to:

(a) The fraudulent sale of Plaintiffs' futures contracts, commodity options, other commodities, futures contracts and commodity options including options and currencies not traded on a national exchange;

(b) The fraudulent solicitation by Kohli and Chandran of commodity customers;

(c) Materially misrepresenting the success of the Sigma Entities' past and current performance to

investors and potential investors as an inducement to their continued investing;

(d) Materially overstating the amount of Plaintiffs' funds under management;

(e) Informing certain investors that their investments were fully insured by Lloyds of London, when in fact they were not; and,

(f) Engaging in a fraudulent "Ponzi" scheme.

196. During the course of the period of time during which the Defendants, FCMs and FCM EMPLOYEES made a practice of opening Special Accounts for and over which Kohli and Chandran, under the business names of the Sigma Entities, exercised discretion as Third Party Account Controllers, the FCMs and FCM EMPLOYEES acquired knowledge, that:

(a) Kohli, Chandran and the Sigma Entities were not registered with the CFTC nor Members of the NFA;

(b) Kohli, Chandran and the Sigma Entities did not provide a Written Statement to the Plaintiffs, describing among other things their exemption, pursuant to 17 CFR § 4.13;

(c) Kohli, Chandran and the Sigma Entities did not provide a Written Statement to the FCMs and FCM EMPLOYEES, describing among other things their exemption, pursuant to 17 CFR § 4.13;

(d) Kohli, Chandran and the Sigma Entities did not provide a Disclosure Document to the Plaintiffs describing among other things their exemption,

pursuant to 17 CFR § 4.21 and NFA Compliance Rule 2.13; and,

(e) Kohli, Chandran and the Sigma Entities were consistently losing the Plaintiffs' money through trading activities with the FCMs and FCM EMPLOYEES.

197. With this knowledge, the Defendants, FCMs and FCM EMPLOYEES participated directly or indirectly in the conduct of such enterprises' affairs through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c) by engaging in numerous acts between January 1, 1989 and April 12, 1995 which were related to each other so as to effect the common scheme to secure and maintain Plaintiff Class members' investment in the enterprise and to lull them into a false sense of security with respect to these investments, including:

(a) Failing to refuse to carry accounts, accept and handle transactions and commodity futures contracts on behalf of Kohli, Chandran and the Sigma Entities;

(b) Failing to demand that Kohli, Chandran and the Sigma Entities deliver the Written Statement, describing among other things, the exemption of Kohli, Chandran and the Sigma Entities to register with the CFTC;

(c) Failing to obtain from Kohli, Chandran and the Sigma Entities receipts signed by the Plaintiffs for the required Disclosure Agreement pursuant to 17 CFR § 4.24; and,

(d) Receiving commission income from the trading of commodities and commodity futures con-

tracts—derived directly from the patterns of racketeering activity.

198. The RICO Act provides in pertinent part, that:

> "It shall be unlawful for any person to conspire to violate any of the provisions of the . . . ." 18 U.S.C. §§ 1962(c),(d).

199. Defendants, FCMs and FCM EMPLOYEES, participated in the conduct of the enterprises' affairs through the aforementioned pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

200. With knowledge that Kohli, Chandran and the Sigma Entities were engaged in racketeering activities, the FCMs and the FCM EMPLOYEES willfully aided and abetted Kohli, Chandran and the Sigma Entities in their conduct of such enterprises affairs through a pattern of racketeering in violation of 18 U.S.C. § 1962(c).

201. As a direct and proximate result of the acts of Defendants, FCMs and FCM EMPLOYEES, in violation of 18 U.S.C. § 1962, the Plaintiff Class members have suffered substantial damages, the exact amount to be proved at the time of trial.

WHEREFORE, Plaintiffs demand judgment, jointly and severally, against Defendants, FCMs and FCM EMPLOYEES, as follows:

(a) For an award of compensatory damages equal to the amount of loss sustained by the Plaintiff Class members and commissions and fees paid to Defendants by the Plaintiff Class members as a result of Defendants' violation of law (in an

amount which will be proved with more particularity at time of trial).

(b) For an award of damages to compensate the Plaintiff Class members for the loss of alternative investment opportunities as part of compensatory damages.

(c) For an award of damages to compensate the Plaintiff Class members for the loss clue to unexpected adverse tax consequences.

(d) For tripling of all judgments under RICO, for each Plaintiff Class member, together with reasonable attorney's fees and costs of suit.

(e) Punitive Damages.

(f) For Plaintiff Class members' attorney's fees, costs and disbursements incurred herein.

(g) Pre-judgment interest.

(h) For such other and further relief as the Court deems just and proper.

CLAIM X
(FRAUD AND CIVIL CONSPIRACY)

202. Plaintiffs reallege and incorporate by this reference paragraphs 1 through 201, inclusive, as paragraph 202 of Claim X.

203. This Claim is brought pursuant to New Jersey common law and is asserted against Defendants, FCMs and FCM EMPLOYEES named herein. Liability of Defendants, FCMs is premised on their direct activities and, in the alternative, on the activities of their respective FCM EMPLOYEES.

204. Sometime between approximately January 1, 1989 and April 12, 1995 Kohli, Chandran and the Sigma Entities, none of whom were registered with CFTC nor the NFA, approached the Defendants FCMs to place all orders to purchase or sell futures contracts through said Defendants, each of whom were then and continue to be registered as a FCM pursuant to the CEA 7 U.S.C. § 6f and a member of the NFA. All orders to purchase or sell futures contracts with the funds solicited by Kohli, Chandran and the Sigma Entities would be placed directly through the Defendants FCMs or in the alternative, indirectly through FCM EMPLOYEES of the respective FCMs.

205. At all times pertinent hereto, Defendants FCMs opened Special Accounts for investment in commodities, for future delivery and/or options on commodities for Kohli and Chandran, through business names of Sigma, Inc., Geronimo, Inc. a/k/a Geronimo Group, Vol Partners, L. P. and Savid Group, as Third-Party Account Controllers without CFTC registration and NFA membership.

206. The Defendants, FCMs and FCM EMPLOYEES failed to investigate and know their customer. Upon information and belief the aforesaid Defendants failed to perform minimum due diligence by not contacting the CFTC and the NFA to gather information regarding Kohli, Chandran and the Sigma Entities pursuant to NFA Compliance Rule 2-8(e).

207. Neither Kohli nor Chandran were registered with the CFTC as either a CPO or CTA, nor did either meet an exemption from such registration.

208. The Defendants, FCMs and FCM EMPLOYEES carried accounts, accepted orders and handled com-

modity futures contracts for Kohli, Chandran and the Sigma Entities, all non-Members of the NFA.

209. At least as early as February, 1991, Saul Stone and later all FCMs and FCM EMPLOYEES knew in fact that Kohli, Chandran and the Sigma Entities were falsely representing to Plaintiffs and potential investors that they were operating in a lawful manner, held all licenses and registrations necessary to conduct their business, and operated under standards established by the appropriate state and Federal regulatory agencies with the intention that Plaintiffs should rely on these representations, and that Plaintiffs were relying upon these representations to their detriment.

210. As early as February, 1991, Saul Stone and later all FCMs and FCM EMPLOYEES knew in fact that Kohli, Chandran and the Sigma Entities did not provide a Written Statement to the Plaintiffs, describing among other things their exemption, pursuant to 17 CFR § 4.13.

211. At least as early as March, 1991, FCMs, in particular Saul Stone, and FCM EMPLOYEES knew that Kohli, Chandran and the Sigma Entities were becoming more and more deeply indebted to the Plaintiffs as a result of their misuse of the funds entrusted to them for investment purposes.

212. The FCMs and the FCM EMPLOYEES breached their duties by aiding and abetting Kohli, Chandran and the Sigma Entities in these frauds, conspiring with Kohli, Chandran and the Sigma Entities to commit these frauds, or acting in concert with Kohli, Chandran and the Sigma Entities to commit these frauds in concealing the true nature of their activities from Plaintiffs and potential investors by, *inter alia*:

(a) That Kohli, Chandran and the Sigma Entities were not registered and/or licensed CPO or in any other respect licensed to trade commodity futures contracts third parties, although they were required to be so licensed, if engaged in trading commodity futures for the Plaintiffs;

(b) That Kohli, Chandran and the Sigma Entities were not members of the NFA in any capacity;

(c) That Kohli, Chandran and the Sigma Entities were not registered and/or licensed under either state or Federal laws or regulations as a securities dealer, broker or other person permitted to sell securities to third parties;

(d) That the securities solicited and sold to Plaintiff Class members were not registered as securities under either state or Federal laws or regulations;

(e) That Defendants, FCMs and FCM EMPLOYEES earned commissions on every commodity futures contract trade made through FCMs;

(f) That Defendants, FCMs had not followed the rules and regulations of the CFTC and the NFA Manual concerning disclosure of information as required to be made to pool participants;

(g) That some of Plaintiff investors' funds were going to repay Defendants, FCMs for debit balances in the accounts;

(h) That Kohli and Chandran had very little, or no knowledge, about commodity futures contract trading and very little or no experience as an investor in commodity futures contracts;

(i) That Kohli and Chandran were not keeping or maintaining accurate and complete records of the handling of all sums received from members of the Plaintiff Class and/or funds invested in commodity futures contracts;

(j) In investing and managing the Plaintiffs' funds, Kohli, Chandran and the Sigma Entities had not followed the rules and regulations of the CFTC and the NFA Manual concerning the operations of such pools, the disclosures required to be made to pool participants, the records that must be made and kept by pool operators, and the availability of such records to pool participants;

(k) Kohli, Chandran and the Sigma Entities were becoming more and more deeply indebted to the Plaintiffs as a result of their misuse of the funds entrusted to them for investment purposes; and,

(l) Kohli, Chandran and the Sigma Entities had never earned any annual net income for the Plaintiffs on a consolidated basis through their investment of funds obtained from them.

213. Kohli, Chandran and the Sigma Entities defrauded Plaintiffs by intentionally creating the false public perception that the unregistered pool was large, profitable and legitimate, and by failing to disclose material facts to investors.

214. Plaintiffs reasonably relied on the above-described false appearance in making their investment decisions.

215. The FCMs and FCM EMPLOYEES accepted the fruits (*i.e.*, commissions on the purchase and sale of commodity contracts) of the fraud. The FCMs and the

FCM EMPLOYEES knew or should have known that those funds had been obtained by fraud. Therefore, the FCMs and FCM EMPLOYEES are liable for the fraud as through they had directly participated in the fraudulent sales of the pool interests.

216. Defendants, FCMs directly and/or through their respective agents, the FCM EMPLOYEES, conspired in combination with Kohli, Chandran and the Sigma Entities to commit criminal or unlawful acts and/or to commit lawful acts for criminal or unlawful purposes described herein, specifically including, but not necessarily limited to conspiring to obtain funds, from the Plaintiff Class members, by misrepresentation and/or fraud and conspiracy to cover up the true nature of Kohli and Chandran's "Ponzi" scheme.

217. As a direct and proximate result of Defendants', FCMs' and FCM EMPLOYEES' actions in aiding and abetting Kohli, Chandran and the Sigma Entities in these frauds and conspiring to cover up the true nature of Kohli's, Chandran's and the Sigma Entities' "Ponzi" scheme, or acting in concert with Kohli, Chandran and the Sigma Entities, the Plaintiff Class members have suffered substantial damages, the exact amount to be proved at time of trial.

WHEREFORE, Plaintiffs demand judgment, jointly and severally, against the Defendants, FCMs and FCM EMPLOYEES, as follows:

(a) For an award of compensatory damages equal to the amount of loss sustained by the Plaintiff Class members and commissions and fees paid to Defendants by the Plaintiff Class members as a result of Defendants' violation of law (in an

amount which will be proved with more particularity at time of trial).

(b) For an award of damages to compensate the Plaintiff Class members for the loss of alternative investment opportunities as part of compensatory damages.

(c) For an award of damages to compensate the Plaintiff Class members for the loss due to unexpected adverse tax consequences.

(d) Punitive Damages.

(e) For Plaintiff Class members' attorney's fees, costs and disbursements incurred herein.

(f) Pre-judgment interest.

(g) For such other and further relief as the Court deems just and proper.

CLAIM XI
(CONSUMER PROTECTION)

218. Plaintiffs reallege and incorporate by this reference paragraphs 1 through 217, inclusive, as paragraph 218 of Claim XI.

219. This Claim is brought pursuant to the New Jersey Consumer Fraud Act, N.J.S.A 56:8-1, *et seq.* and is asserted against the Defendants, FCMs and FCM EMPLOYEES.

220. The Defendants, FCMs and FCM EMPLOYEES, have violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*, by allowing Kohli, Chandran and the Sigma Entities to trade commodities, futures contracts, commodity options and contracts for sale of commodities for future delivery, on behalf of non-Mem-

bers of the NFA that are required to be registered with the CFTC, thereby causing the acts of Kohli, Chandran and the Sigma Entities to appear to be legal. As such, the illegal actions of the FCMs and the FCM EMPLOYEES were a material inducement to the Plaintiffs to turn over their funds to Kohli, Chandran and the Sigma Entities and, in fact, such illegal actions worked to deceive the Plaintiffs.

221. Said Defendants' acts alleged in this Complaint constitute unfair or deceptive trade practices and are in violation of the New Jersey Consumer Fraud Act, N.J.S.A 56:8-1, *et seq.*, in that they engaged in unfair and deceptive acts as detailed above, including among other things, the knowing concealment and suppression of a material fact, in that Kohli, Chandran and the Sigma Entities were not registered with the CFTC as an AP, a CPO or a CTA nor a member of the NFA, in connection with the sale of merchandise—commodities, futures contracts, commodity options and contracts for sale of commodities for future delivery, in violation of N.J.S.A. 56:8-2. Said acts by said Defendants are in violation of Federal and state statutes, enacted in the public interest and therefore constitute a *per se* violation of the New Jersey Consumer Fraud Act.

222. The New Jersey Consumer Fraud Act provides in pertinent part, that:

> "The term 'sale' shall include any sale, . . . , offer for sale, . . . , attempt directly or indirectly to sell . . . ." (N.J.S.A. 56:8-1(e)).

223. The Plaintiff Class members reasonably relied upon the unfair and deceptive acts of the Defendants, FCMs and FCM EMPLOYEES, were deceived and induced to deliver and pay money to Kohli, Chandran

and the Sigma Entities and thereby suffered substantial damages to their property, the exact amount to be proved at time of trial.

WHEREFORE, Plaintiffs demand judgment, jointly and severally, against Defendants, FCMs and FCM EMPLOYEES, as follows:

(a) For an award of compensatory damages equal to the amount of loss sustained by the Plaintiff Class members and commissions and fees paid to Defendants by the Plaintiff Class members as a result of Defendants' violation of law (in an amount which will be proved with more particularity at time of trial).

(b) For an award of damages to compensate the Plaintiff Class members for the loss of alternative investment opportunities as part of compensatory damages.

(c) For an award of damages to compensate the Plaintiff Class members for the loss due to unexpected adverse tax consequences.

(d) For tripling of all judgments under New Jersey Consumer Fraud Act, N.J.S.A. 56:8-19, for each Plaintiff Class member, together with reasonable attorney's fees and costs of suit.

(e) Punitive Damages.

(f) For Plaintiff Class members' attorney's fees, costs and disbursements incurred herein.

(g) Pre-judgment interest.

(h) For such other and further relief as the Court deems just and proper.

JURY DEMAND

THE PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

By Their Attorney

By: EDWARD M. BERNSTEIN
Edward M. Bernstein (EB 0774)
Attorney At Law
3371 Brunswick Pike
Suite 214
Lawrenceville, New Jersey
(609) 987-8300
Attorney for Plaintiffs

Dated: November 23, 1997

CERTIFICATION OF RICHARD NICHOLAS AND LYNN NICHOLAS

We, RICHARD NICHOLAS AND LYNN NICHOLAS, each being of full age, hereby certify follows:

1. We are two (2) of the named Plaintiffs in the within civil action. By way of this certification, we hereby confirm that we reviewed the Amended Class Action Complaint and Demand for Jury Trial. and authorized its filing prior to November 24, 1997. We reviewed the Complaint independent of and in conjunction with Edward M. Bernstein, an Attorney At Law of the State of New Jersey.

2. We did not purchase the security that is the subject of the Amended Class Action Complaint at the direction of Edward M. Bernstein or in order to participate in the within Civil Action.

3. We are each willing to serve as a representative party on behalf of the Class, including providing testimony at deposition(s) and trial, if necessary.

4. We deposited funds with Charles "Chuck" Kohli, Ram Chandra a/k/a Nungambukkam Swamy Ramachandran, Sigma, Inc., and Vol Partners, L.P. from our IRA accounts, 401(K) pension funds and personal savings as follows:

Amount Invested	January 12, 1993	4,000.00
	May 1, 1993	8,000.00
	May 18, 1993	25,000.00
	January 4, 1994	10,000.00
	January 4, 1994	30,000.00
	August, 1994	125,000.00
Amount Returned		$ (39,000.00)
Net Loss		$ (163,000.00)

We lost all but $39,000.00 of their investment as well as improperly charged fees, $213,000.00 in purported profits and unexpected adverse tax consequences. We were required to file bankruptcy in the United States Bankruptcy Court for the District Court of New Jersey due to the aforesaid loss.

5. We have not sought to serve, nor have we served, as a representative party on behalf of a class in any other action filed under Securities Act of 1933 during the period commencing on January 1, 1994 and continuing to the date hereof.

6. We each will not accept any payment for serving as a representative party on behalf of a Class beyond our pro rata share of any recovery, except as otherwise ordered or approved by the Court.

We hereby certify that the foregoing statements made by us are true. We are aware that if any of the foregoing statements made by us are willfully false, we are subject to punishment.

/s/ RICHARD NICHOLAS
Richard Nicholas

/s/ LYNN NICHOLAS
Lynn Nicholas

Dated: November 23, 1997

CERTIFICATION OF ROBERT M. BLACKBURN AND CHERYL S. BLACKBURN

We, ROBERT M. BLACKBURN AND CHERYL S. BLACKBURN, each being of full age, hereby certify as follows:

1. We are two (2) of the named Plaintiffs in the within civil action. By way of this certification, we hereby confirm that we reviewed the Amended Class Action Complaint and Demand for Jury Trial and authorized its filing prior to November 24, 1997. We reviewed the Complaint independent of and in conjunction with Edward M. Bernstein, an Attorney At Law of the State of New Jersey.

2. We did not purchase the security that is the subject of the Amended Class Action Complaint at the direction of Edward M. Bernstein or in order to participate in the within Civil Action.

3. We are each willing to serve as a representative party on behalf of the Class, including providing testimony at deposition(s) and trial, if necessary.

4. We deposited funds with Charles "Chuck" Kohli, Ram Chandran a/k/a Nungambukkam Swamy Ramachandran, Sigma Inc., and Vol Partners, L.P. from our IRA accounts, 401(K) pension funds and personal savings as follows:

Amount Invested	February 24, 1994	$106,306.39
	March 10, 1994	3,946.41
Amount Returned	April 12, 1995	$ (0.00)
Net Loss		$ (110,252.80)

We lost all of our investment as well as improperly charged fees, $133,468.65 in purported profits and unexpected adverse tax consequences.

5. We have not sought to serve, nor have we served, as a representative party on behalf of a class in any other action filed under the Securities Act of 1933 during the period commencing on January 1, 1994 and continuing to the date hereof.

6. We each will not accept any payment for serving as a representative party on behalf of a Class beyond our pro rata share of any recovery, except as otherwise ordered or approved by the Court.

We hereby certify that the foregoing statements made by us are true. We are aware that if any of the foregoing statements made by us are wilfully false, we are subject to punishment.

/s/ ROBERT M. BLACKBURN
Robert M. Blackburn

/s/ CHERYL S. BLACKBURN
Cheryl S. Blackburn

Dated: November 23, 1997

Exhibit "A"

UNITED STATES COURT OF APPEALS
DISTRICT OF NEW JERSEY

Criminal No. 96-132 (AET)

Filed March 6, 1996

7 U.S.C. §§ 60(1) & 13(a)(2); 18 U.S.C. §§1341, 1343 & 2; and 26 U.S.C. § 7201

UNITED STATES OF AMERICA

v.

CHUCKLES KOHLI, a/k/a Chuck Kohli

INFORMATION

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

COUNT 1
(Commodities Fraud)

1. At all times relevant to this Information:

a. Defendant CHUCKLES KOHLI, a citizen of India and a permanent legal resident of the United States, resided in the Princeton, New Jersey area. Defendant CHUCKLES KOHLI was the principal owner and investment manager of Sigma, Inc. ("Sigma") and The Savid Group ("Savid"), related companies through which he purportedly managed investment funds and commodity portfolios on behalf of individuals, trustees, pension funds and retirement plans. Sigma and Savid shared office space in Princeton, New Jersey.

b. Sigma and Savid were each a "commodity pool operator" as that term is defined in Title 7, United States Code, Section 1a(4) and Title 17, Code of Federal Regulations, Section 1.3(cc).

c. Defendant CHUCKLES KOHLI was an "associated person of a commodity pool operator" as that term is defined in Title 17, Code of Federal Regulations, Section 1.3(aa)(3).

The Scheme to Defraud Sigma/Savid Clients

2. From at least as early as in or about March 1991 to on or about April 12, 1995, at Princeton, in the District of New Jersey, and elsewhere, the defendant

CHUCKLES KOHLI
a/k/a Chuck Kohli,

an associated person of a commodity pool operator, did knowingly and willfully, by direct and indirect use of the mails and other means and instrumentalities of interstate

commerce, employ a device, scheme and artifice to defraud clients and prospective clients of Sigma and Savid, and engage in transactions, practices and a course of business which operated as a fraud and deceit upon clients and prospective clients of Sigma and Savid, which scheme and artifice was in substance as set forth in paragraphs 3 through 34 below.

3. The object of the scheme to defraud existing and prospective clients of Sigma/Savid was for defendant CHUCKLES KOHLI to obtain and retain investor funds by means of false and fraudulent pretenses, representations, and promise concerning himself, Sigma/Savid, and the nature, performance and safety of Sigma/Savid investments. Among the false and fraudulent pretenses, representations, and promises made by defendant CHUCKLES KOHLI are those set forth below.

Misrepresentations Concerning His Educational Background

4. Defendant CHUCKLES KOHLI falsely and fraudulently represented that he had obtained a degree in economics from Columbia University when, in fact, he had attended Columbia University as an undergraduate for only two semesters and had not received a degree of any sort from that institution or from any other college or university.

Misrepresentations Concerning the Investment Experience of Sigma/Savid

5. Defendant CHUCKLES KOHLI falsely and fraudulently represented that both Sigma and Savid were formed and began operations in 1985 when, as defendant CHUCKLES KOHLI knew, Sigma and Savid did not exist and were not managing investments until in or about March 1991.

6. Defendant CHUCKLES KOHLI falsely and fraudulently represented that Sigma/Savid was providing risk management consulting services on over $1 billion in receivables for 25 corporate clients that were all Fortune 100 companies. As defendant CHUCKLES KOHLI knew, Sigma/Savid never provided risk management consulting services for any Fortune 100 companies.

7. Defendant CHUCKLES KOHLI falsely and fraudulently represented that he had brought $15 million in institutional investments to Sigma/Savid from his prior employment at Citibank, and that institutional investment at Sigma/Savid had reached peak of 16 institutional clients, including I.B.M., with $260 million under management. As defendant CHUCKLES KOHLI knew, Sigma/Savid never had more than $1 million in institutional investments under management, and Sigma/Savid had never managed investment funds for I.B.M.

8. Defendant CHUCKLES KOHLI falsely and fraudulently represented that the state retirement system of Virginia and a college retirement fund were Sigma/Savid clients and that Sigma/Savid had $230 million in pension funds under management. As defendant CHUCKLES KOHLI knew, Sigma/Savid never had more than $350,000 in pension funds under management and never had as clients the state retirement system of Virginia or the retirement fund of any college.

Misrepresentations Concerning Registration with Regulatory Authorities

9. Defendant CHUCKLES KOHLI falsely and fraudulently represented that neither Sigma, Savid nor he himself was required to be registered with the Commodity Futures Trading Commission or the New Jersey Bureau of Securities when, as defendant CHUCKLES KOHLI

knew, Sigma and Savid were each required to be registered as a commodity pool operator and he himself was required to be registered as an associated person of a commodity pool operator.

Misrepresentations Concerning Insurance of Savid Investments

10. Defendant CHUCKLES KOHLI falsely and fraudulently represented that Savid investments were fully insured by Lloyds of London ("Lloyds").

11. From in or about March 1991 through in or about January 1993, defendant CHUCKLES KOHLI sent approximately 20 letters to existing and prospective clients concerning insurance on Savid investments with the expectation that these letters would be circulated by the recipients to additional prospective investors. These letters falsely and fraudulently represented as follows:

a. Savid investors were the beneficiaries of insurance policy no. 245-07-4309-18556 underwritten by Lloyds, which insured against any material change in their investment, including the dissolution of Savid or any deterioration in the tangible net worth of the firm;

b. in the event of such a calamity, Savid investors would be able to recover from Lloyds the monetary equivalent of the full value of their investment accounts as determined by their most recent monthly statement; and

c. any claims under the policy could be addressed to Michael Kelleher, the U.S. agent for Lloyds, who could be reached at a specified telephone number in New York City.

12. As defendant CHUCKLES KOHLI knew at the time he sent these letters, Lloyds had never underwritten any

such policy on behalf of Savid investors, and Michael Kelleher, the purported U.S. agent for Lloyds, did not exist.

13. Defendant CHUCKLES KOHLI even went so far as to direct other individuals to assume the identity of the fictitious Michael Kelleher during telephone conversations and meetings with investors to answer questions about the purported Lloyds insurance policy.

Misrepresentations Concerning Sigma/Savid Investment Parameters

14. Defendant CHUCKLES KOHLI falsely and fraudulently represented that all options purchased or sold by Sigma/Savid through commodities clearing firms on behalf of its clients were fully hedged—*i.e.* counterbalanced by an opposite position in the cash market to minimize the risk of financial loss—at the end of each trading day when, as defendant CHUCKLES KOHLI knew, substantial unhedged options positions remained at the end of each day's trading.

15. Defendant CHUCKLES KOHLI falsely and fraudulently represented to Sigma/Savid clients that only 20% of investor funds would be invested or leveraged at any one time while the remaining 80% would be held in a reserve fund. As defendant CHUCKLES KOHLI knew, client monies were invested or leveraged haphazardly without any consideration given to the percentage of any particular client's investment at risk, and these investments were never segregated into active and reserve funds.

16. Defendant CHUCKLES KOHLI falsely and fraudulently represented to Sigma/Savid clients that, if any client account suffered a loss of 2% or more of its total value in any given month, Sigma/Savid would

a. notify all investors of the loss and allow any of them to withdraw the full value of their investment accounts immediately; and

b. temporarily suspend trading to allow for structural changes to be made to the formulas and models that guided investment decisions.

17. As defendant CHUCKLES KOHLI knew, since Sigma/Savid began managing investments in or about March 1991, all client accounts regularly suffered a monthly loss of 2% or more of their total values, yet investors were never notified of these losses, and trading was never suspended to adjust investment strategies.

Misrepresentations Concerning the Nature of Sigma/Savid Investments

18. Defendant CHUCKLES KOHLI falsely and fraudulently represented that Sigma/Savid investors had a choice of allocating their investments to one or more of the following seven investment funds: (a) the Currency Derivative Portfolio; (b) the Currency Portfolio; (c) the Global Fixed Income Portfolio; (d) Capital Growth Portfolio; (e) the Conservative Equity Portfolio; (f) the Diversified Portfolio; and (g) VOL Partners, L.P. According to defendant CHUCKLES KOHLI, the performance of each of these funds differed by virtue of the purported mix of stocks and commodities in each pool and the risk associated with the investment strategies for each pool.

19. Defendant CHUCKLES KOHLI falsely and fraudulently represented that investor monies would be used to purchase "units" of these funds and portfolios, the values of which would be segregated into individual accounts for each investor.

20. As defendant CHUCKLES KOHLI knew, the funds and portfolios listed in paragraph 18 never existed, and investor funds were never segregated into individual accounts. Upon receipt by Sigma/Savid, all investor monies were lumped together into a single corporate account at Carnegie Bank, which was the source of funds utilized by defendant CHUCKLES KOHLI to conduct daily trading activity with commodities clearing firms as well as to pay his business and personal expenses.

Misrepresentations Concerning the Performance of Sigma/Savid Investments

21. In promotional literature of Sigma/Savid, defendant CHUCKLES KOHLI falsely and fraudulently represented monthly and annual rates of return for the non-existent funds and portfolios listed in paragraph 18 from January 1985 through February 1991, a period prior to the establishment of either Sigma or Savid. Defendant CHUCKLES KOHLI boasted of annual returns during this period for these non-existent funds and portfolios as high as 90.57% but never lower than 14.49%, returns that significantly outperformed the Standard & Poor 500 Index for the relevant periods.

22. Defendant CHUCKLES KOHLI falsely and fraudulently represented that, during the period from March 1991 through April 1995, all the non-existent funds and portfolios listed in paragraph 18 appreciated in value each and every month with a few minor exceptions in 1991 and early 1992. These monthly figures translated into purported annual returns across the spectrum of the non-existent funds and portfolios averaging approximately 50%, and annual returns for the most aggressive of these non-existent funds and portfolios as high as 132.32%.

23. From at least as early as in or about November 1992 through in or about March 1995, defendant CHUCKLES KOHLI, at the beginning of each calendar month, sent every Sigma/Savid client a letter and account statement falsely and fraudulently reporting appreciation in that client's investment account and projecting an annual return based upon the reported appreciation of the previous calendar months.

24. Defendant CHUCKLES KOHLI extracted a management fee from every Sigma/Savid client amounting to 25% of the supposed appreciation in their investment accounts as detailed in the monthly letters and account statements.

25. As defendant CHUCKLES KOHLI knew, Sigma/Savid monthly commodity trading activity yielded loss rather than profit in all but nine disparate months during the entire period from March 1991 through April 1995. Defendant CHUCKLES KOHLI was also well aware that, despite these few marginally profitable trading months, Sigma/Savid accumulated net trading losses continuously from November 1991 through April 1995, resulting in total trading losses of approximately $19.5 million.

Misrepresentations Concerning the Purchase of Zero Coupon Bonds

26. Defendant CHUCKLES KOHLI falsely and fraudulently offered two Sigma/Savid clients investment options outside the non-existent funds and portfolios listed in paragraph 18. At defendant CHUCKLES KOHLI'S suggestion, these two individuals provided him with a total of $300,000 to purchase zero coupon bonds denominated in U.K. Sterling with a coupon income of 8.98% and a maturity date in the year 2000. Defendant CHUCK-

LES KOHLI never purchased any zero coupon bonds on behalf of these investors, yet from in or about January 1993 through in or about March 1995, he sent them monthly account statements falsely and fraudulently reporting the continuous appreciation of their zero coupon bond investment.

Misrepresentations Concerning the Confidential Nature of Personal Data on Applications

27. Defendant CHUCKLES KOHLI falsely and fraudulently advised prospective Sigma/Savid clients that personal data submitted on investment application forms, such as Social Security number, date of birth, annual income and net worth, would be kept strictly confidential.

28. In or about October 1991, defendant CHUCKLES KOHLI applied for a corporate American Express card in the name of a Savid investor without that investor's knowledge or consent. Defendant CHUCKLES KOHLI completed the credit card application with personal data provided by the investor on his Savid investment application form.

29. Based upon the application, American Express issued a corporate card in the name of the investor and established a billing address for this card at defendant CHUCKLES KOHLI's personal residence. Defendant CHUCKLES KOHLI used this American Express card to charge his travel, dining and entertainment expenses related to Sigma/Savid business.

Forging Commodity Clearing Firm Statements

30. On or about December 27, 1994, a Savid investor expressed concern that his accountant had been unable to verify the full value of the investor's personal and cor-

porate investments with Savid. In an effort to assuage this concern, defendant CHUCKLES KOHLI met with the accountant at the Sigma/Savid offices on or about February 1, 1995. At that meeting, defendant CHUCKLES KOHLI provided the accountant with a forged December 1994 year end statement from the commodity clearing firm GNI Limited, which falsely and fraudulently showed a $17.7 million cash balance for Savid as of December 30, 1994.

31. In or about December 1994, defendant CHUCKLES KOHLI caused the printing of dozens of blank statement forms similar to those used by the commodity clearing firms GNI Limited and Saul Stone & Company so that he could create forged statements similar to the one described in paragraph 30 and provide those statements to other inquisitive investors.

Giving Preferential Treatment to Family Member Investors

32. In or about February 1995, when it became clear that the massive trading losses and insolvency of Sigma/Savid would soon be discovered, defendant CHUCKLES KOHLI suggested to his sister and her husband that they should completely liquidate their Sigma/Savid accounts. At this time, defendant CHUCKLES KOHLI permitted them to withdraw their entire principal as well as some of the supposed interest earned on this investment.

33. As a result of the scheme to defraud existing and prospective clients of Sigma/Savid, defendant CHUCKLES KOHLI obtained a total of approximately $41 million from investors. Approximately $19.5 million was lost by defendant CHUCKLES KOHLI while engaged in commodity trading, including commissions paid to commodity clearing firms. Approximately $7.9 million was

spent by defendant CHUCKLES KOHLI on the operating expenses of Sigma/Savid. Approximately $2 million was transferred by defendant CHUCKLES KOHLI into personal accounts controlled by he and/or his then wife. The remaining $11.6 million was primarily comprised of withdrawals by Sigma/Savid investors from their investment accounts, but also included finders fees paid by defendant CHUCKLES KOHLI to existing Sigma/Savid investors to recruit new investors. The net result is that Sigma/Savid investors as a whole were defrauded of approximately $30 million.

34. To date, only approximately $1.4 million of investor funds have been recovered by John Manley, the court-appointed equity receiver for Sigma/Savid. Approximately $600,000 was realized from Sigma/Savid bank accounts and the liquidation of open trading positions placed by defendant CHUCKLES KOHLI. The remaining $800,000 was obtained by Manley pursuant to a settlement with defendant CHUCKLES KOHLI's ex-wife.

All in violation of Title 7, United States Code, Sections 60(1) and 13(a)(2).

COUNT 2
(Wire Fraud)

1. The allegations set forth in paragraphs 1(a) and 3 through 34 of Count 1 of this Information are realleged as if set forth herein at length.

2. From at least as early as in or about March 1991 to on or about April 12, 1995, at Princeton, New Jersey, and elsewhere, the defendant CHUCKLES KOHLI devised and intended to devise a scheme and artifice to defraud clients and prospective clients of Sigma and Savid and to obtain money and property of clients and prospective clients of Sigma and Savid by means of false and fraudulent pretenses, representations and promises, which scheme and artifice was in substance as set forth in paragraphs 3 through 34 of Count 1 of this Information.

3. On or about September 16, 1991, for the purpose of executing said scheme and artifice, at Princeton, in the District of New Jersey, and elsewhere, the defendant

CHUCKLES KOHLI
a/k/a Chuck Kohli,

knowingly and willfully caused a copy of the letter described in paragraph 11 of Count 1 of this Information to be transmitted via facsimile machine from the offices of Sigma/Savid in Princeton, New Jersey to Gerald Johnson, president of Campbell & George Company, in San Carlos, California.

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT 3
(Mail Fraud)

1. The allegations set forth in paragraphs 1(a) and 3 through 34 of Count 1 of this Information are realleged as if set forth herein at length.

2. From at least as early as in or about March 1991 to on or about April 12, 1995, at Princeton, New Jersey, and elsewhere, the defendant CHUCKLES KOHLI devised and intended to devise a scheme and artifice to defraud clients and prospective clients of Sigma and Savid and to obtain money and property of clients and prospective clients of Sigma and Savid by means of false and fraudulent pretenses, representations and promises, which scheme and artifice was in substance as set forth in paragraphs 3 through 34 of Count 1 of this Information.

3. On or about April 23, 1993, for the purpose of executing said scheme and artifice, and attempting to do so, at Princeton, in the District of New Jersey, and elsewhere, the defendant

CHUCKLES KOHLI
a/k/a Chuck Kohli,

knowingly and willfully caused to be placed in a post office and an authorized depository for mail matter, and caused to be delivered by mail according to the direction thereon, an envelope addressed to Rosalyn Golaine, 11 Old Stable Road, Demarest, New Jersey 07627, containing a letter falsely and fraudulently reporting that he had purchased on her behalf $100,000 in zero coupon bonds denominated in U.K. Sterling with a coupon income of 8.98% and a maturity date in December 2000.

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 4
(Mail Fraud)

1. The allegations set forth in paragraphs 1(a) and 3 through 34 of Count 1 of this Information are realleged as if set forth herein at length.

2. From at least as early as in or about March 1991 to on or about April 12, 1995, at Princeton, New Jersey, and elsewhere, the defendant CHUCKLES KOHLI devised and intended to devise a scheme and artifice to defraud clients and prospective clients of Sigma and Savid and to obtain money and property of clients and prospective clients of Sigma and Savid by means of false and fraudulent pretenses, representations and promises, which scheme and artifice was in substance as set forth in paragraphs 3 through 34 of Count 1 of this Information.

3. On or about March 1, 1995, for the purpose of executing said scheme and artifice, and attempting to do so, at Princeton, in the District of New Jersey, and elsewhere, the defendant

CHUCKLES KOHLI
a/k/a Chuck Kohli,

knowingly and willfully caused to be placed in a post office and an authorized depository for mail matter, and caused to be delivered by mail according to the direction thereon, an envelope addressed to Michael and Susan Lamore, 3602 Chadford Place, Greensboro, North Carolina 27410, containing a letter and monthly account statement falsely and fraudulently reporting that their Savid investment account had appreciated 8.1% during the month of February 1995 and projecting an annual return of 99.45% for the calendar year 1995.

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 5
(1992 Income Tax Evasion)

1. The allegations set forth in paragraphs 1(a) of Count 1 of this Information are realleged as if set forth herein at length.

2. At all times relevant to this Information, defendant CHUCKLES KOHLI:

a. treated all the employees of Sigma/Savid, including himself, as independent contractors with the consequence that he did not withhold taxes from salaries and did not issue Forms W-2;

b. handled the affairs of Sigma/Savid to avoid making and keeping records usually connected with a business, including payroll books and records; and

c. diverted funds of Sigma/Savid investors to the personal use of himself and his then wife.

3. During the calendar year 1992, defendant CHUCKLES KOHLI had and received taxable income of about $359,387.39 from Sigma/Savid investor funds, and upon this taxable income, a tax of about $104,161.09 was due and owing to the United States.

4. At no time on or before April 15, 1993 did defendant CHUCKLES KOHLI file a United States Individual Income Tax Return, Form 1040, for the calendar year 1992.

5. On or about April 15, 1993, in Mercer County, in the District of New Jersey, and elsewhere, the defendant

CHUCKLES KOHLI
a/k/a Chuck Kohli,

knowingly and willfully did attempt to evade and defeat a substantial part of the income tax due and owing by him to the United States for the calendar year 1992.

In violation of Title 26, United States Code, Section 7201.

COUNT 6
(1993 Income Tax Evasion)

1. The allegations set forth in paragraphs 1 and 2 of Count 5 of this Information are realleged as if set forth herein at length.

2. During the calendar year 1993, defendant CHUCKLES KOHLI had and received taxable income of about $369,561.91 from Sigma/Savid investor funds, and upon this taxable income, a tax of about $122,875.02 was due and owing to the United States.

4. At no time on or before April 15, 1994 did defendant CHUCKLES KOHLI file a United States Individual Income Tax Return, Form 1040, for the calendar year 1993.

5. On or about April 15, 1994, in Mercer County, in the District of New Jersey, and elsewhere, the defendant

CHUCKLES KOHLI
a/k/a Chuck Kohli,

knowingly and willfully did attempt to evade and defeat a substantial part of the income tax due and owing by him to the United States for the calendar year 1993.

In violation of Title 26, United States Code, Section 7201.

COUNT 7
(1994 Income Tax Evasion)

1. The allegations set forth in paragraphs 1 and 2 of Count 5 of this Information are realleged as if set forth herein at length.

2. During the calendar year 1994, defendant CHUCKLES KOHLI had and received taxable income of about $247,671.02 from Sigma/Savid investor funds, and upon this taxable income, a tax of about $74,466.07 was due and owing to the United States.

4. At no time on or before April 17, 1995 did defendant CHUCKLES KOHLI file a United States Individual Income Tax Return, Form 1040, for the calendar year 1994.

5. On or about April 17, 1995, in Mercer County, in the District of New Jersey, and elsewhere, the defendant

CHUCKLES KOHLI
a/k/a Chuck Kohli,

knowingly and willfully did attempt to evade and defeat a substantial part of the income tax due and owing by him to the United States for the calendar year 1994.

In violation of Title 26, United States Code, Section 7201.

/s/ Faith S. Hochberg
FAITH S. HOCHBERG
United States Attorney

Exhibit B-1

VOL PARTNERS, L.P.

POWER OF ATTORNEY

Vol Partners, L.P. c/o Mr. Chuck Kohli, 205 Nassau Street, Princeton, N.J. 08540.

1993

Dear Sir:

In connection with my interest in VOL PARTNERS, L.P. (the "Partnership") I do hereby irrevocably constitute and appoint Mr. Chuck Kohli (the "General Partner") as my true and lawful Attorney-in-Fact, with full power of substitution, in my name, place and stead, to execute, acknowledge and swear to (i) the Limited Partnership Agreement of the Partnership, and (ii) such Powers of Attorney and other account forms as shall be required by the Partnership's Clearing Firm and Bank.

The Power of Attorney granted herein shall be irrevocable and deemed to be a power coupled with an interest and shall survive the incapacity or death of a Partner. Each Partner agrees to be bound by representations made by the General Partner and by any successor thereto, acting in good faith pursuant to such Power of Attorney, and each Partner hereby waives any and all defenses which may be available to contest, negate or disaffirm

the action of the General Partners taken pursuant to this Power of Attorney.

/s/ [ILLEGIBLE]
Individual Partner

Entity Partner

(Name of Entity)

By
(Authorized trustee, partner or corporate officer)

Exhibit B-1

VOL PARTNERS, L.P.

POWER OF ATTORNEY

Vol Partners, L.P., c/o Sigma Inc., 210 Carnegie Center Ste 102 Princeton, N.J. 08540.

1994

Dear Sir:

In connection with my interest in VOL PARTNERS, L.P. (the "Partnership") I do hereby irrevocably constitute and appoint Sigma Inc. (the "General Partner") as my true and lawful Attorney-in-Fact, with full power of substitution, in my name, place and stead, to execute, acknowledge and swear to (i) the Limited Partnership Agreement of the Partnership, and (ii) such Powers of Attorney and other account forms as shall be required by the Partnership's Clearing Firm and Bank.

The Power of Attorney granted herein shall be irrevocable and deemed to be a power coupled with an interest and shall survive the incapacity or death of a Partner. Each Partner agrees to be bound by representations made by the General Partner and by any successor thereto, acting in good faith pursuant to such Power of Attorney, and each Partner hereby waives any and all defenses which may be available to contest, negate or disaffirm

the action of the General Partner taken pursuant to this Power of Attorney.

/s/ [ILLEGIBLE]
Individual Partner

Entity Partner

(Name of Entity)

By
(Authorized trustee, partner or corporate officer)

Exhibit B-1

VOL PARTNERS, L.P.

POWER OF ATTORNEY

Vol Partners, L.P., c/o Sigma Inc., 210 Carnegie Center Ste 102 Princeton, N.J. 08540.

1995

Dear Sir:

In connection with my interest in VOL PARTNERS, L.P. (the "Partnership") I do hereby irrevocably constitute and appoint Sigma Inc. (the "General Partner") as my true and lawful Attorney-in-Fact, with full power of substitution, in my name, place and stead, to execute, acknowledge and swear to (i) the Limited Partnership Agreement of the Partnership, and (ii) such Powers of Attorney and other account forms as shall be required by the Partnership's Clearing Firm and Bank.

The Power of Attorney granted herein shall be irrevocable and deemed to be a power coupled with an interest and shall survive the incapacity or death of a Partner. Each Partner agrees to be bound by representations made by the General Partner and by any successor thereto, acting in good faith pursuant to such Power of Attorney, and each Partner hereby waives any and all defenses which may be available to contest, negate or disaffirm the action of the General Partners taken pursuant to this Power of Attorney.

/s/ [ILLEGIBLE]
Individual Partner

Entity Partner

(Name of Entity)

By
(Authorized trustee, partner or corporate officer)

[LETTERHEAD OF SIGMA INC]

VOL PARTNERS L.P.

EXHIBIT "C"

VOL PARTNERS L.P.

Limited Partnership Agreement

This Limited Partnership Agreement made in Princeton, N.J., as of the _____ day of ____, by and between Sigma Inc. as General Partner and each other party who shall execute a counterpart of this Agreement as a limited partner or who becomes a party to this Agreement as a limited partner by execution of a separate instrument or otherwise (individually "Limited Partner" or collectively "limited partners") (the General Partners and limited partners may be collectively referred to herein as "Partners"):

WITNESSETH:

WHEREAS, the parties hereto desire to form a limited partnership for the purpose of trading in derivative securities for speculative gain as described below:

NOW, THEREFORE, the parties hereto agree as follows:

1. Formation and Name.

The parties hereto do hereby form a limited partnership. The name of the limited partnership is Vol Partners, L.P. (the "Partnership").

2. Principal Place of Business.

The principal office of the Partnership shall be in care of the General Partner, Sigma Inc., 101 Carnegie Center, Ste. 203, Princeton, N.J. 08540, or such other place as the General Partner may designate from time to time.

3. Business.

The Partnership business and purpose is to trade, buy, sell or otherwise acquire, hold or dispose of derivative securities (including index options, foreign currencies, and foreign currency options), and other rights pertaining thereto. The objective of the Partnership is the appreciation of its assets through speculative trading.

4. Term, Dissolution, Fiscal Year and Certain Definitions.

(a) Term. The Partnership shall commence on the first day of January, 1992, and shall continue for a period ending on the first to occur of the following:

(i) December 31, 1995.

(ii) An election to dissolve the Partnership at any time by limited partners owning more than 50% of the Units of limited partnership interest then outstanding, notice of which is sent by registered mail to the General Partner not less than 60 days prior to the effective date of such dissolution.

(iii) A decline in Net Assets of the Partnership (defined below) of 20% of initial capital contributions.

(iv) Any event which shall make unlawful the continued existence of the Partnership.

(b) Dissolution. Upon the first to occur of the above events, the Partnership shall terminate and be dissolved. Dissolution, payment of creditors and distribution of the Partnership assets shall be effected such that the General Partner and each limited partner (and any assignee) shall share in the assets of the Partnership pro rata in accordance with their respective interests, less any amount owing by such Partner (or assignee) to the Partnership.

(c) Fiscal Year. The fiscal year of the Partnership shall begin on January 1 of each year and end on the following December 31.

(d) Certain Definitions. Net Assets of the Partnership shall mean the sum of all cash, United States Treasury bills and other securities (valued at cost plus accrued interest), the liquidating value of all derivative securities positions and other assets of the Partnership, as determined by the General Partner on a basis consistently applied, less all liabilities of the Partnership including all brokerage charges which would be incurred in liquidating the Partnership's open positions and all management, and incentive fees payable by the Partnership; in each case as determined in accordance with generally accepted accounting principles under the accrual basis of accounting, except as described here. The liquidating value of derivative securities position shall mean its liquidating value as determined by the General Partner on a basis consistently applied. The Net Asset Value of a Unit shall mean the net assets allocated to capital accounts represented by Units of limited partnership interest divided by the number of such Units outstanding.

5. Units of Limited Partnership Interest and Capital Contributions.

Interests in the Partnership shall be Units of limited partnership interest (a "Unit"). The General Partner may, on behalf of the Partnership issue and sell additional Units at net asset value giving the remaining limited partners the right to participate therein.

If the Partnership shall not have obtained during the period of the initial offering of the Units ("Initial offering Period") subscriptions for at least 100 Units ($100,000), this Agreement shall terminate, and all capital contributed to the Partnership shall be promptly returned to the contributors thereof undiminished and with interest allocated on an equitable basis as determined by the General Partner. The Partnership shall not commence trading operations unless and until the General Partners have accepted subscriptions for at least 100 Units ($100,000). The General Partners may terminate any offering of Units at any time.

6. Allocation of Profits, Losses, and Fees.

(a) Capital Accounts. A capital account shall be established for each Partner. The initial balance of each Partner's capital account shall be the amount of his initial contribution to the Partnership.

(b) Allocations; Valuation Dates. The last day of the first calendar month or portion thereof of trading operations of the Partnership and the last day of each month thereafter during the term of the Partnership are each considered to be a "Valuation Date." As of the close of business (as determined by the General Partner) on each Valuation Date and on each Special Redemption Date, the net asset value

of the units shall be made and reported to the partners.

(c) Allocation of Profit and Loss for Federal Income Tax Purposes. As of the end of each fiscal year, the Partnership's profit or loss shall be allocated among the Partners, including the General Partners, pursuant to the following subparagraphs for federal income tax purposes. Such allocations of profit and loss will be pro rata from net short-term capital gain or loss, net long-term gain or loss and net operating income or loss realized by the Partnership.

(i) Net realized profit shall be allocated to each Partner who has redeemed Units during the year to the extent that the amount the Partner received on redemption of Units exceeds the amount paid for the redeemed Units.

(ii) Net realized profit remaining after the allocation in subparagraph (i) above shall be allocated among all Partners in the ratio that each Partner's capital account bears to all Partners' capital accounts.

(iii) Net realized loss shall be allocated first to each Partner who has redeemed Units during the year to the extent the amount the Partner paid for the Units exceeds the amount he receives on redemption or withdrawal.

(iv) Net realized loss remaining after the allocation in subparagraph (iii) above shall be allocated among all Partners in the ratio that each Partner's capital account bears to all Partners' accounts.

(v) For the purpose of the allocations of realized profit and loss in subparagraphs (i) and (iii) above, the amount each Partner paid for each of his Units shall be deemed to have increased by the amount of realized profit allocated to the Partner with respect to such Unit and decreased by any distribution and by the amount of any loss allocated to the Partner with respect to such Unit.

(d) Fees. The Partnership shall be charged all brokerage commissions and exchange fees at rates to be negotiated by the General Partner with a clearing firm selected by the General Partner. The Partnership will pay Sigma Inc., General Partner, twenty-five percent of the profit achieved by the partnership. This management fee will accrue monthly and will be payable quarterly. One of the limited partners is a securities broker who will be an equity participant as well as a recipient of commissions, the amount of which will be determined by the General Partner.

(e) Limited Liability of Limited Partners. Each Unit, when purchased in accordance with this Agreement, shall be fully paid and nonassessable. Any provisions of this Agreement to the contrary notwithstanding, no limited partner shall be liable for Partnership obligations in excess of the capital contributed by him, plus his share of profits remaining in the Partnership.

(f) Return of Limited Partner's Capital Contribution. Each Partner agrees not to request for return of profits or initial capital contributions for at least twelve months from the commencement of operation.

7. Management of the Partnership.

The General Partner, to the exclusion of all limited partners, shall conduct and manage the business of the Partnership, including, without limitation, the investment of the funds of the Partnership. The General Partner shall have sole discretion in determining what distributions of profits and income, if any, shall be made to the Partners, shall execute various documents on behalf of the Partnership and the Partners pursuant to powers of attorney and supervise the liquidation of the Partnership if agent causing termination of the Partnership occurs. In order to facilitate the foregoing, each limited partner shall execute a power of attorney as described in Exhibit B.

The General Partner may, in furtherance of the business of the Partnership, cause the Partnership to buy, sell, hold, otherwise acquire or dispose of equity index options, foreign currencies, and foreign currency options.

The General Partner may take such other actions on behalf of the Partnership as it deems is necessary to manage the business of the Partnership including, but not limited to, the following: opening bank accounts and paying, or authorizing the payment of, distributions to the Partners and expenses of the Partnership such as management fees described in section 6(d) of the Limited Partnership Agreement, and brokerage commissions. The General Partner shall have a fiduciary responsibility to the Partnership with respect to the safekeeping and use of all funds and assets of the Partnership, whether or not in its immediate possession and control.

The General Partner is engaged in other business activities and shall not be required to refrain from any other activity nor forego any profits from any such activity, whether as limited partner of any other entity, trad-

ing for its own individual account or trading advisor to additional partnerships for investment in derivative securities, or otherwise.

8. Reports to Limited Partners.

The Partnership will use its best efforts to cause each Partner to receive within 75 days of the end of each fiscal year of the Partnership such tax information as is necessary for him to complete his federal income tax return. In addition, the General Partners will report or cause to be reported monthly to the limited partners the following information: The Net Asset Value of a Unit as of the end of the month, as of the end of the previous month, and as of the inception of the partnership, and the percentage change in Net Asset Value of a Unit between the two months and as of the year to date; the amount of additions, redemptions or distributions during the month, and the aggregate brokerage commissions and management fees incurred or accrued by the Partnership during the month.

9. Redemption of Units of Limited Partnership Interest; Non-Assignability of Units and Suspension of Trading in Certain Events.

Except as set forth herein, each limited partner expressly agrees that he will not assign, transfer or dispose of, by gift or otherwise, any of his Units or any part or all of his right, title and interest in the capital or profits of the Partnership and that any such purported disposition is void; provided, however, that any individual limited partner may assign Units by will or by virtue of the laws of descent and distribution, any beneficial owner of a Unit registered in the name of a nominee may revoke nominee status, and any limited partner which is a corporation, partnership, trust or other entity may,

upon liquidation, dissolution or other termination thereof, assign Units to the shareholders, partners, beneficiaries or other beneficial owners thereof. No assignee may become a substituted limited partner nor will the estate of any beneficiary of a deceased limited partner have any right to withdraw any capital or profits from the Partnership except by redemption of Units. Each limited partner agrees that he has no right to consent to and will not consent to any person or entity becoming a substituted Limited Partner.

Assignment of Partnership interests shall be permitted, provided that such assignment will not cause the Partnership to be taxable as a corporation or an association rather then as a partnership under the policies of the Internal Revenue Service. In any event each assignment must be for at least the minimum subscription amount stated in the Partnership's offering documents and each assignee must meet minimum investor suitability standards set forth in the offering documents.

A limited partner (or assignee of Units) may withdrew from the Partnership all or any part of his capital contribution and undistributed profits, if any (such withdrawal being herein referred to as "redemption"), by requiring the Partnership to redeem any or all of his Units at the Net Asset Value of a Unit, calculated as of the close of business (as determined by the General Partners) on the date immediately preceding the effective date of redemption, as of the first day of any quarter, after the first twelve months of investing in the partnership; provided, that (i) all liabilities, contingent or otherwise, of the Partnership, except any liability to Partners on account of their capital contributions, have been paid or there remains property of the Partnership sufficient to pay them, (ii) the General Partners shall have timely received a Request for Redemption as hereinafter defined, and (iii) that the requested redemption

shall not reduce the net assets of the partnership to less then the initial capital contribution of the partners. As used herein, Request for Redemption shall mean a letter in the form specified by the General Partners sent by a limited partner (or any assignee thereof) and received by the General Partner at least ninety days (or such lesser period acceptable to the General Partner) prior to the requested effective date of redemption. A form of Request for Redemption is included as an exhibit to the initial documents. Additional forms of Request for Redemption may be obtained by written request to the General Partner. The General Partners may declare additional redemption dates upon notice to the limited partners. Upon redemption, a Partner (or any assignee thereof) shelf receive from the Partnership for each whole Unit redeemed an amount equal to the Net Asset Value of a Unit, less the amount owing by such Partner (and his assignee, if any) to the Partnership pursuant to Paragraph 9 hereof. If redemption is requested by an assignee, all amounts owed under Paragraph 9, by the Partner to whom such Unit was sold by the Partnership as well as all amounts owed by all assignors who owned such Unit shall be deducted from the amount paid to such assignee upon redemption of his Units.

10. Withdrawal of General Partner.

The General Partner may withdraw from the Partnership at any time after 12 months from the inception of the partnership on ~~90 days~~ written notice by first class mail, postage prepaid, to each Limited Partner. In that event or in the event of the death, or incompetency of the General Partner, the Partnership shall terminate and be dissolved; provided, however, that the remaining limited partners may elect a replacement general partner in the event of such withdrawal. The death, incompetency,

or withdrawal of a limited partner shall not terminate or dissolve the Partnership and Such Limited Partner, his estate, custodian or personal representative shall have no right to withdraw or value such Limited Partner's interest in the Partnership except as provided in Paragraph 10 hereof.

11. No Personal Liability for Return of Capital.

The General Partner shall not be personally liable for the return or repayment of all or any portion of the capital or profits of any Partner (or assignee), it being expressly agreed that any such return of capital or profits will be made solely from the assets (which shall not include any right of contribution from the General Partner) of the Partnership.

12. Indemnification.

(a) The General Partner and Affiliates shall have no liability to the Partnership or to any Partner for any loss suffered by the Partnership which arises out of any action or inaction of the General Partner or Affiliates if the General Partner or Affiliates, in good faith, determined that such course of conduct was in the best interests of the Partnership and such course of conduct did not constitute negligence or misconduct of the General Partner or Affiliates. The General Partner and Affiliates shall be indemnified by the Partnership against any losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by them in connection with the Partnership. provided that the same were not the result of negligence or misconduct on the part of the General Partners or their Affiliates and arose in connection with the Partnership.

(b) Notwithstanding the above, the General Partner and Affiliates and any person acting as a broker-dealer shall not be indemnified for any losses, liabilities or expenses arising from or out of an alleged violation of federal or state securities laws unless (1) there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee, or (2) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee or (3) a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee.

13. Amendments; Meetings.

(a) Amendments With Consent of the General Partner. If at any time during the term of the Partnership the General Partner deem it necessary or desirable to amend this Agreement, such amendment shall be effective only if embodied in an instrument signed by the General Partner and by the limited partners owning more than 50% of the Units then owned by limited partners. Any such supplemental or amendatory agreement shall be adhered to and have the same effect from and after its effective date as if the same had originally been embodied in and formed a part of this agreement, provided, however, that no such supplemental or amendatory agreement shall, without the consent of all limited partners, change or alter this Paragraph 13, extend the term of the Partnership, reduce the capital account of any Partner, modify the percentage of profits, losses or distributions to which any Partner is entitled. In addition, reduction of the capital account of any assignee or modification of the percentage of prof-

its, losses or distributions to which an assignee is entitled hereunder shall not be affected by amendment or supplement to this Agreement without such assignee's consent.

(b) Meetings. Any Limited Partner, upon written request addressed to the General Partner, shall be entitled to obtain from the General Partners a list of the names and addresses of record of all limited partners and the number of Units held by each. Upon receipt of a written request, signed by limited partners owning at least 50% of the Units then owned by limited partners, that a meeting of the Partnership be called to vote upon any matter which the limited partners may vote upon pursuant to this Agreement, the General Partner shall, by written notice to each limited partner of record mailed within 15 days after such receipt, call a meeting of the Partnership. Such meeting shall be held at least 30 days, but not more than 50 days after the mailing of such notice, and such notice shall specify the date, a reasonable place and time, and the purpose of such meeting.

14. Governing Law.

The validity and construction of this Agreement shall be determined and governed by the laws of the State of New Jersey.

15. Miscellaneous.

(a) Priority Among limited partners. No limited partners shall be entitled to any priority or preference over any other limited partner in regard to the affairs of the Partnership.

(b) Notices. Except for Requests for Redemption, all notices under this Agreement shall be in writing and shall be effective upon personal delivery, or if sent by first class mail, postage prepaid, addressed to the last known address of the party to whom such notice is to be given, then, upon the deposit of such notice in the United States mails. Requests for Redemption shall be effective upon timely receipt by the General Partner.

(c) Binding Effect. This Agreement shall inure to and be binding upon all of the parties, their successors in interest, assigns as permitted herein, custodians, estates, heirs and personal representatives. For purposes of determining the rights of any Partner or assignee hereunder, the Partnership and the General Partners may rely upon the Partnership records as to who are Partners and assignees and all Partners and assignees agree their rights shall be determined and that they shall be bound thereby, including all rights which they may have under Paragraph 14 hereof.

(d) Captions. Captions in no way define, limit, extend or describe the scope of this Agreement nor the effect of any of its provisions.

GENERAL PARTNER:

IN WITNESS WHEREOF the parties have executed this Agreement as of the

LIMITED PARTNER:

_____
(Name of Limited Partner)

_____
Sigma, Inc., General Partner
By Chuck Kohli, President of Sigma, Inc.
Attorney-in-Fact for the Limited Partner named above

_____
Date of Signature:

EXHIBIT B

Subscribers should complete and sign one copy of each of the Subscription Agreement, and the Power of Attorney (Exhibit "B-1")

VOL PARTNERS, L.P.

SUBSCRIPTION AGREEMENT

Sigma Inc., General Partner, VOL Partners L.P., 101 Carnegie Center, Ste 203, Princeton, N.J. 08540

Gentlemen

1. Subscription. Subject to the terms and conditions of this Agreement, the undersigned hereby irrevocably subscribes for and agrees to purchase _____ Units of Limited Partnership Interest, (the "Units") of Vol Partners, L.P., (the "Partnership"). The undersigned is delivering to the Partnership herewith (i) the undersigned's check, payable to the order of Sigma, Inc. in the amount of $_____ representing the aggregate purchase price of as many Units as such funds will purchase, fractional units included, (ii) a completed and duly executed Power of Attorney, in the form attached to the Memorandum as Exhibit B-1.

2. Acceptance of Subscription. The undersigned acknowledges that the General Partner reserves the right, in his sole and absolute discretion, to accept or reject this subscription, in whole or in part, and that this subscription shall not be binding unless and until accepted by the General Partner. The undersigned agrees that sub-

scriptions need not be accepted in the order they are received.

3. Representations and Warranties. The undersigned represents and warrants to the Partnership as follows:

(a) The General Partner has answered all inquiries that the undersigned has made of it concerning the Partnership, its business and financial condition or any other matter relating to the operation of the Partnership and the offering and sale of the Units. No oral or written statement or inducement which is contrary to the information set forth in the Memorandum has been made by or on behalf of the Partnership to the undersigned.

(b) The undersigned is an "accredited investor" or the undersigned has such knowledge and experience in financial and business matters to enable him to utilize the information made available to him in connection with the offering of the Units, to evaluate the merits and risks of the prospective investment, and to make an informed investment decision with respect thereto.

(c) The undersigned (i) has adequate means of providing for his current needs and possible personal contingencies, (ii) has no need for liquidity in this investment, (iii) is able to bear the economic risks of his investment in the Units and (iv) at the present time, can afford a complete loss of such investment.

(d) The undersigned is purchasing the Units for investment and not for distribution, assignment or resale to others, and no other person has any direct or indirect beneficial interest in such Units.

(e) The undersigned, if a corporation, partnership, trust or other entity, is organized under the laws of a state of the United States, and is authorized and otherwise duly qualified to purchase and hold the Units, and

such entity has its principal place of business at the address set forth on the signature page hereof.

(f) The undersigned, if an individual, is a citizen of the United States of America or a resident alien, is a least 21 years of age, and has the legal capacity to execute, deliver and perform this Agreement.

(g) All information which the undersigned has provided to the General Partner concerning himself, his financial position and his knowledge of financial and business matters, or, in the case of a corporation, partnership, trust or other entity, the knowledge of financial and business matters of the person making the investment decision on behalf of such entity, including all information contained herein is true and complete as of the date set forth at the end hereof, and if there should be any adverse change in such information prior to this subscription being accepted, the undersigned will immediately provide the General Partner with accurate and complete information concerning any such change.

(h) The undersigned certifies, under penalties of perjury, (i) that the social security or federal taxpayer identification number shown on the signature page of this Agreement is true and complete and (ii) that the undersigned is not subject to backup withholding either because the undersigned has not been notified that he is subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified the undersigned that he is no longer subject to backup withholding.

(i) The undersigned understands that brokerage commissions will be charged to the Partnership and that the General Partner for the Partnership will charge the Partnership for management fees as described in section 7(d) of the Limited Partnership Agreement.

(j) The undersigned understands that the undersigned can withdraw the undersigned's contributed capital from the Partnership on ninety days written notice to the General Partner on the first day of any quarter after the first twelve months of investing in the partnership and that the undersigned has no right to demand distributions from the Partnership prior to the termination, other than by redemption of Units.

4. Acceptance of Limited Partnership Agreement. The undersigned hereby agrees to each and every term of the Limited Partnership Agreement as if the undersigned's signature were subscribed thereto. The undersigned hereby appoints the General Partner as the undersigned's attorney-in-fact to subscribe the undersigned's name to the Limited Partnership Agreement.

5. Indemnification. The undersigned agrees to indemnify and hold harmless the General Partner from and against any and all damage, loss, liability, cost and expense (including attorneys' fees) which the General Partner may incur by reason of failure by the undersigned to fulfill any of the terms or conditions of this Agreement or in any other document provided by the undersigned to the General Partner. All representations, warranties and covenants contained in this Agreement, and the indemnification contained in this paragraph 5, shall survive the acceptance of this subscription.

6. No waiver. Notwithstanding any of the representations, warranties, acknowledgments or agreements made herein by the undersigned, the undersigned does not thereby or in any other manner waive any of the rights granted to him under federal or state securities laws.

7. Entire Agreement; Modification. This Agreement constitutes the entire agreement among the parties hereto

with respect to the subject matter hereof, and neither this Agreement nor any provisions hereof shall be waived, changed, discharged or terminated except by an instrument in writing signed by the party against whom any waiver, change, discharge or termination is sought.

8. Notices. Any notice, demand or other communication which any party hereto may be required, or may elect, to give to anyone interested hereunder shall be sufficiently given if (i) deposited, postage prepaid, in the United States mail, registered or certified mail, return receipt requested, addressed to: in the case of the Partnership: Sigma Inc., General Partner, Vol Partners, L.P., 101 Carnegie Center, Ste. 203 Princeton, NJ 08540, and in the case of the undersigned, at the address set forth on the signature page hereof or at such other address as the undersigned shall so notify pursuant hereto, or (ii) delivered personally at such address.

9. Binding Effect. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, legal representatives and assigns. If the undersigned is more than one person, the obligations of the undersigned shall be joint and several and the agreements, representations, warranties and acknowledgments herein contained shall be deemed to be made by and be binding upon each such person and his respective heirs, executors, administrators, successors, legal representatives and assigns.

10. Assignability. The undersigned agrees not to transfer or assign this Agreement, or any of the undersigned's interest herein, and further agrees that the transfer or assignment of the Units shall be made only pursuant to the provisions of the Limited Partnership Agreement and in accordance with applicable laws.

11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

12. Form of Ownership. Please indicate form of ownership desired.

Individual	_____
Joint tenants with right of survivorship	_____
Tenants in common	_____
Community property	_____
Corporation	_____
Partnership	_____
Trust	_____
Other (specify)	_____

13. Items to be Delivered by Subscriber.

(a) One completed and executed Subscription Agreement.

(b) One executed Power of Attorney.

day of_____, at _____(City), _____(State).

INDIVIDUAL(S) SIGN HERE

NOTE: All individuals with a direct beneficial interest in the Partnership as a joint tenant, tenant in common or otherwise must sign below, and execute the Power of Attorney (Exhibit B-1).

_____

Signature

_____

Social Security Number

_____

Printed Name

Residence Address:

_____

_____

_____

_____

Exhibit B-1

VOL PARTNERS, L.P.

POWER OF ATTORNEY

General Partner, VOL Partners L.P., 101 Carnegie Center, Ste 203 Princeton, N.J. 08540.

Dear Sir:

In connection with my interest in VOL PARTNERS, L.P. (the "Partnership") I do hereby irrevocably constitute and appoint Sigma Inc. (the "General Partner") as my true and lawful Attorney-in-Fact, with full power of substitution, in my name, place and stead, to execute, acknowledge and swear to (i) the Limited Partnership Agreement of the Partnership, and (ii) such Powers of Attorney and other account forms as shall be required by the Partnership's Clearing Firm and Bank.

The Power of Attorney granted herein shall be irrevocable and deemed to be a power coupled with an interest and shall survive the incapacity or death of a Partner. Each Partner agrees to be bound by representations made by the General Partner and by any successor thereto, acting in good faith pursuant to such Power of Attorney, and each Partner hereby waives any and all defenses which may be available to contest, negate or disaffirm

the action of the General Partners taken pursuant to this Power of Attorney.

_____

Individual Partner

_____

Entity Partner

_____

(Name of Entity)

_____

By
(Authorized trustee, partner or corporate officer)

Exhibit B-2

VOL PARTNERS, L.P.

REQUEST FOR REDEMPTION

General Partner, VOL Partners L.P., 101 Carnegie Center, Ste 203 Princeton, N.J. 08540.

Dear Sirs:

I hereby request redemption, as defined in and subject to all the terms and conditions of Vol Partners, L.P., (the "Partnership"), of $_____ of my limited partnership Interest of the Partnership. The redemption will be for _____ Units based on the Net Asset Value of a Unit as defined in the Limited Partnership Agreement, for each Unit indicated, less any amounts owed by me to the Partnership pursuant to Paragraph 9 of the Limited Partnership Agreement. Redemption shall be effective as of the first day of the next calendar quarter occurring 90 days (or such lesser period as may be acceptable to you) after receipt by you of this Request for Redemption. I hereby represent and warrant the I am the true, lawful and beneficial owner of the Units of limited partnership Interest of the Partnership to which this request relates with full power and authority to request redemption of such Units. Such Units are not subject to any pledge or otherwise encumbered in any fashion.

SIGNATURES MUST BE IDENTICAL TO NAME(S) IN WHICH UNITS OF LIMITED PARTNERSHIP ARE REGISTERED

Please forward such funds by mail to the undersigned at:

_____

Name

_____

Street

_____

City State and ZIP Code

_____

(Signature of limited partner)

_____

Requested Redemption Date